

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 285 OF 2004

Farheen Tabassum w/o. Shaikh Sajid,
Age 25 years, Occu. Household,
R/o. Deepnagar, Nanded.

**....Petitioner.
(Ori. Complainant)**

Versus

1. Shaikh Sajid s/o. Shaikh Habib,
Age 28 years, Occu. Business,
R/o. Dhobi Galli, Gadipura,
Nanded.
2. Bilquis Banu w/o. Shaikh Habib,
Age 46 years, Occu. Household,
R/o. As above.
3. Shaikh Habib s/o. Shaikh Mohammed,
Age 51 years, Occu. Tailor,
R/o. As above.
4. Shaikh Javed s/o. Shaikh Habib,
Age 31 years, Occu. Tailor,
R/o. As above.
5. Shaikh Majid s/o. Shaikh Habib,
Age 20 years, Occu. Education,
R/o. As above.
6. Zarinabegum w/o. Mohd. Irshad,
Age 33 years, Occu. Household,
R/o. Sana Colony, Nanded.

7. The State of Maharashtra

....Respondents.

Mr. N.S. Chaudhary, Advocate for petitioner.

Mr. S.J. Salgare, APP for respondent No. 7/State.

CORAM : T.V. NALAWADE, J.
DATED : 10th January, 2017.

JUDGMENT :

1) The petition is filed to challenge the judgment and order of R.C.C. No. 862/2001, which was pending in the Court of Judicial Magistrate, First Class, Nanded. Respondents are acquitted by the learned J.M.F.C. of the offence punishable under section 498-A r/w. 34 of Indian Penal Code in a police case and original complainant, wife of accused No. 1 has filed present proceeding. Heard the learned counsel for petitioner. The learned APP was also heard. Nobody turned up for the accused persons.

2) Marriage between present petitioner and accused No. 1 took place in the year 1998. There was cohabitation of few years and during cohabitation, one son was born to petitioner and at the time of filing of report, he was aged about two and half years. In F.I.R., it was contended that the husband and his relatives were not satisfied with the dowry of Rs.31,000/- given at the time of marriage and to force the petitioner to bring Rs. 50,000/-, they were giving harassment to the petitioner. Allegations were made in the F.I.R. that even beating was given to her and she was starved by husband, his relatives. Husband wanted that amount to start shop of readymade clothes. She

had contended that the amount of Rs.25,000/- was given in December 2000 to the husband by her relative from parents side, but the husband was not satisfied with that amount and he continued to give illtreatment and ultimately on 25.6.2001 he snatched away all the ornaments and drove her out from the matrimonial house. The report was given on 25.6.2001.

3) The crime was registered for offences punishable under section 498-A, 323 and 34 of I.P.C. against the husband and his relatives like parents, brothers etc. During investigation, the statements of relatives of the first informant like her father, grandfather etc. were recorded and the chargesheet was filed for aforesaid offences. When the charge was framed and the plea was recorded, all the accused pleaded not guilty. Prosecution examined aforesaid two relatives of complainant in addition to complainant and one police officer was examined. During statements recorded under section 313 of Cr.P.C., the accused took the defence of total denial and in the defence, they examined some witnesses like Chairman of one institution created to settle the disputes between the spouses and one Kazi.

4) The Trial Court has held that on 15.6.2001, Talak was

given by the husband and it was sent through R.P.A.D. to the wife, but wife refused to accept the envelop containing Talak. The Trial Court held that the wife had started living separate from husband much before 25.3.2001. Due to the record available, the Trial Court has disbelieved wife and her witnesses.

5) It appears that before the Trial Court the wife produced two letters allegedly sent by her to her parents. These letters were shown to be sent in April 2001 and May 2001. The defence evidence, which is oral evidence of one Aleemunissa Zeenat (DW 1) shows that the parties had approached her in the year 2001, she had tried to settle the dispute, but the wife refused to return back to the matrimonial house. She had communicated the result of the efforts made by her in letter dated 21.4.2001. This evidence shows that the wife had started living separate from accused No. 1 seven to eight months prior to 21.4.2001. The evidence of Kazi shows that Talak was given in his presence on 15.6.2001. The Trial Court has held that the record of post office is sufficient to infer that Talak was sent to wife and it was communicated to her. The envelop is on the record though it is not exhibited. This record falsifies the case of the wife that she was driven out of the matrimonial house on 25.6.2001.

6) The Trial Court has considered the inconsistencies appearing in the allegations made in the aforesaid two letters which were apparently sent or shown to be sent to her parents after the date of starting separate residence by wife and the allegations made in the F.I.R. The aforesaid circumstances are sufficient to create a probability that false allegations are made and allegations were afterthought. As Talak was given by husband on 15.6.2001, the probability in favour of the accused is considered for acquitting the accused. In view of this record, this Court holds that it is not possible to interfere in the decision given by the Trial Court. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/