

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.324 OF 2016

IN

CRIMINAL APPEAL NO.150 OF 2016

SHRIRAM BALASAHEB HIVARE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Ajay Bhise i/b. Mr.H.S.Venegaonkar, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st FEBRUARY 2017.

P.C. :

1 This is an application by an accused who has been convicted of the offence punishable under Section 498A of the IPC by the learned Additional Sessions Judge, Thane, in Sessions Case No.280 of 2013, for stay to the conviction. The applicant / accused has been sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/-, in default, to suffer simple

imprisonment for 1 month, by the judgment and order of the learned Additional Sessions Judge, Thane, which is impugned in the appeal before this court.

2 Heard the learned advocate appearing for the applicant / accused. By pointing out the judgment and order passed by the learned Additional Sessions Judge, Thane, he argued that the applicant has been acquitted of all major offences such as Section 302 and 304B of the IPC. He is in employment and because of conviction, there is likelihood of his removal from service. The learned advocate relied on judgment of the Hon'ble Supreme Court in the matter of **Shyam Narain Pandey vs. State of U.P.**¹ and by drawing my attention to paragraph 9, he argued that except serious offences, the conviction can be suspended.

3 The learned APP opposed the application by contending that the reason so stated is not relevant for suspension of conviction.

1 Criminal Appeal No.1515 of 2014 decided on 22nd July 2014

4 I have carefully considered the rival submissions and also perused the application. It is averred in the application that the applicant is a State Government employee working in the Police Department as Police Constable, and therefore, considering the perverse reasoning of the learned Additional Sessions Judge, Thane, conviction needs to be suspended.

5 According to prosecution case, the applicant / accused married Archana (since deceased) who was in employment of the Police Department after having love affair with her. On 19th December 2012, in the rented flat of the couple, Archana died because of burn injuries. The applicant / accused came to be prosecuted for the offences punishable under Sections 302, 304B, 498A read with Section 34 of the IPC. Evidence of PW6 Baban Potekar shows that the incident of sustaining burns by Archana took place in presence of the present applicant. Though the applicant / accused has been convicted of the offence punishable under Sections 498A of the IPC, the learned APP, on instructions, has made a statement that the State is proceeding to challenge the

judgment and order of the learned Additional Sessions Judge, Thane, so far as it relates to acquittal of the applicant / accused of offences punishable under Sections 302 and 304B of the IPC.

6 In the matter of **Shyam Narain Pandey (supra)** in paragraph 13 thereof, the Hon'ble Supreme Court has held that the contention that the applicant will be deprived of his source of livelihood if the conviction is not stayed, cannot be appreciated. In that judgment, the Hon'ble Supreme Court has referred to several judgments wherein it is held that stay to the conviction needs to be granted only in exceptional cases and there cannot be a stay to the conviction in cases involving moral turpitude.

7 In this view of the matter, no case for stay to conviction is made out.

8 The application is, therefore, rejected.

(A. M. BADAR, J.)