

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL APPLICATION (APPA) NO.681 OF 2017

IN

CRIMINAL APPEAL NO.297 OF 2016

(Sau. Harsha w/o Dharamraj Gadhkine ..vs.. Dharamraj @ Dharmaji Bhikuji Gadhkine and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.R. Thote, Advocate for the applicant/appellant,
Shri G.L. Agrawal, Advocate for respondent No.1,
Shri M. Mourya, Advocate for respondent No.2,
Shri A.V. Palshikar, Addl.P.P. for respondent No.3.

CORAM : ROHIT B. DEO, J.

DATED : 28-09-2017

The applicant, who is the original complainant, is seeking leave to prefer an appeal assailing the judgment and order in Criminal Appeal 285/2013, by and under which the learned Additional Sessions Judge, Nagpur was pleased to acquit the respondents 1 and 2 of offence punishable under Section 498-A of the Indian Penal Code after reversing the judgment and order of the learned Judicial Magistrate First Class, Kalmeshwar in Regular Criminal Case 691/2008.

2. Respondent 1 and 2 alongwith Bhikuji Gadhkine, Hukumchand Gadhkine and Fulabai Gadhkine faced prosecution under Section 498-A and 506 Part-II read with Section 34 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Kalmeshwar pursuant to the first information report dated 26-9-2006 lodged by

the applicant herein.

3. The applicant was then the legally wedded wife of respondent 1, the marriage having solemnized on 06-5-2004 at Kalmeshwar.

4. Concededly, disputes arose *inter se* between the applicant/wife and respondent 1/husband. The applicant instituted proceedings under the Hindu Marriage Act, 1955 seeking a decree of divorce on the ground of cruelty. The petition seeking divorce was instituted or or about 03-8-2005

5. During the pendency of the proceeding seeking divorce, the applicant lodged first information report on 26-9-2006 at Kalmeshwar Police Station, on the basis of which offence came to be registered against respondent 1(husband), respondent 2 (sister-in-law), the father-in-law, mother-in-law and brother-in-law. On the basis of the first information report offences under Sections 498-A and 506 Part-II read with Section 34 of the Indian Penal Code were registered, investigations were completed and charge-sheet submitted to the Court of Judicial Magistrate First Class, Kalmeshwar.

6. The learned Magistrate, by judgment and order dated 21-9-2013, was pleased to acquit Bhikuji Gadhkine, Hukumchand Gadhkine and Fulabai Gadhkine

of the offence punishable under Sections 498-A and 506 Part II of the Indian Penal Code. However, the husband and sister-in-law (respondents 1 and 2 hereinafter referred to as the “accused”) were acquitted only of offence punishable under Section 506 Part-II of the Indian Penal Code and were convicted of offence punishable under Section 498-A of the Indian Penal Code.

7. The judgment of the learned Magistrate was subjected to judicial scrutiny before the appellate Court. By the judgment impugned, the appellate Court was pleased to allow the appeal and set aside the conviction. The original complainant/wife is seeking leave under Section 378(4) of the Code of Criminal Procedure to prefer appeal challenging the judgment of the appellate Court.

8. The learned Counsel Shri V.R. Thote for the applicant/wife submits that the judgment of acquittal is against the weight of evidence. In so far as accused sister-in-law (original accused 5), the submission is that she was in adulterous relationship with accused 1/husband. The adulterous relationship was witnessed by the applicant/wife not once but four times. The conduct amounts to cruelty, is the submission. The learned Counsel for the applicant further submits that it is established by cogent evidence that the accused

1/husband subjected the applicant/wife to cruelty within the meaning of Explanation (a) and (b) of Section 498-A of the Indian Penal Code. The prosecution has established that the accused demanded Rs.70,000/- and sewing machine and colour television, is the submission. My attention is drawn *inter alia* to the testimony of P.W.3 who is the owner of Datta Medical Stores and employer of the brother of the applicant/wife.

9. Per contra, the learned Counsel Shri G.L. Agrawal for respondent 1 and learned Counsel Shri M. Mourya for respondent 2 respectively, submit that the view taken by the learned Sessions Judge is not only a possible view, it is the only view which could have been taken in the teeth of the evidence on record. The learned Counsel would submit that even if it is assumed that a second view is possible, in the absence of any perversity in the judgment, this Court ought not to interfere.

10. The learned Counsel for respondents 1 and 2 (original accused 1 and 5) are right in contending that the limitations of the appellate Court are well recognized. A judgment of acquittal will ordinarily not be disturbed unless the judgment is perverse. If the view is a possible or plausible view, ordinarily this Court will not interfere in the judgment of acquittal.

11. If the submissions on behalf of the applicant/wife are tested on the anvil of the well recognized limitations of the appellate power, I do not find any scope to interfere with the judgment of the acquittal.

12. Be it noted, that the first information report dated 26-9-2006 is lodged more than a year after the institution of the proceedings seeking divorce. The allegations in the first information report are rendered suspect and vulnerable on the short ground that there is absolutely no explanation muchless a possible explanation for the applicant/wife to lodge the first information report more than one year and one month after instituting the petition seeking divorce. The learned Sessions Judge has recorded a finding, and a correct finding, that when the petition seeking divorce was filed, no allegation of adulterous relationship was made therein, the allegation appears to have been added by amending the petition months after the lodging of the first information report. The learned Sessions Judge has further recorded a finding that the allegation that the accused/husband had adulterous relationship with his sister-in-law is inherently improbable in view of the admitted fact that the entire family was residing in a small house comprising one room and one varandah. The appreciation of evidence by the learned Sessions Judge is unexceptionable.

13. The evidence on the demand of Rs.70,000/- etc. is not confidence inspiring. The allegations are made in omnibus manner and are sketchy and sans particulars. P.W.3 who allegedly received a phone call from the husband is not in a position to disclose the date and month in which he received the phone call. That apart, the version of the employer of the wife's brother (P.W.3) that he received a phone call by a person claiming to be the husband of the complainant otherwise does not take the case of the prosecution any further. Concededly, it is admitted by P.W.3 that he had not spoken with the husband any time before. It is axiomatic that P.W.3 was in no position to identify the voice of the applicant. P.W.3 was also present when the first information report was lodged by the applicant/wife, is an admission in the cross-examination.

14. Having given my anxious consideration to the judgments of the learned Magistrate and that of the learned Sessions Judge, I am not persuaded to hold that the applicant/wife has made out a case for grant of leave under Section 378(4) of the Criminal Procedure Code. I do not see any perversity in the view taken by the learned Sessions Judge that cruelty within the meaning of Explanations (a) and (b) of Section 498-A of the Indian Penal Code, is not established.

15. The application seeking leave to appeal is rejected. Consequently the appeal is disposed of.

16. The fees of the learned Counsel appointed for respondent 1 is quantified at Rs.5,000/-.

JUDGE

adgokar