

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1536 OF 2008

1. Dwarkabai @ Yamunabai w/o
Bhagwat Patil
(name is shown as per F.I.R. No.
438 / 2007)
Dwarkabai w/o. Shriniwas Patil,
Age: 35 years, Occu : Household
R/o : Yawal, Tq. Yawal,
District: Jalgaon. **... Applicant**

VERSUS

1. Bhagwat s/o Ukhardu Patil
Age: 41 years, Occu: Agril,
R/o: Sawkheda (Bk.), Tq. Raver,
Dist: Jalgaon.
- 2 The State of Maharashtra
Trough Police Inspector,
Yawal Police Station,
Dist: Jalgaon.
(Copy to be served on Government
Pleader, High Court of Bombay
Bench at Aurangabad). **... Respondents**

Mr. L. V. Sangit, Advocate for the Applicant.

Mrs. C.S. Deshmukh, Advocate for Respondent No.1.

Mr. S.J. Salgare, APP for Respondent No.2 - State.

**CORAM : T. V. NALAWADE AND
K. L. WADANE, JJ.**

DATE: : 25th July, 2018

JUDGMENT (Per K. L. Wadane, J.):

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the application is taken up for final hearing.
2. The present application is filed by the applicant under the provisions of Section 482 of the Code of Criminal Procedure with a prayer to quash the First Information Report No. 438/2007 and Regular Criminal Case No.20/2008 pending before the Judicial Magistrate, First Class, at Yawal, Tq. Yawal, District Jalgaon.
3. We have heard the arguments of Shri. L.V. Sangit, learned counsel for the applicant, Mrs. C.S. Deshmukh, learned counsel for the respondent No.1. and Mr. S.J. Salgare, learned APP for the respondent No.2 – State.
4. We have perused the First Information Report lodged by the respondents on 18.12.2007, in which, it is stated that the respondent No.1 married with the applicant on 22.02.1989. The applicant was insisting respondent to reside in her parental house. However, respondent No.1 refused. The father of the applicant filed an application for custody and accordingly, the custody of the applicant was taken by her father from Raver Court on 03.10.1989. Subsequently, there was maintenance proceeding between the parties and it was disposed of by compromise.

5. Eight days before filing of the First Information Report, one Mr. Jugal Shriniwas Patil informed respondent No.1 that his wife-applicant kept illicit relations with his father Shriniwas Patil and grabbed immovable property of his father. It is further alleged that without obtaining divorce from the respondent, the applicant kept illicit relations with the said Shriniwas Patil from 03.10.1989 till 2004. On the basis of the aforesaid information, the offence came to be registered. It was investigated and charge-sheet was submitted before the trial Court. Looking to the averments in the F.I.R. that there are allegations against the applicant of keeping physical relations with the other person during the sustenance of the marriage between the applicant and the respondent, the offence came to be registered, punishable under Section 497 of the Indian Penal Code. The proviso of Section 497 read as follows:

“Adultery – Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punishable with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

6. On plain reading of the aforesaid provisions, Section 497 does not envisage the prosecution of the wife by the husband for 'adultery'. The offence of adultery, as defined in that Section can only be committed by a

man, not by a woman. Indeed, the Section provides expressly that the wife shall not be punishable even as an abettor. No grievance can then be made that the Section does not allow the wife to prosecute the husband for adultery. The contemplation of the law, evidently, is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The Investigating Officer, without verifying the legal position, has registered the offence, carried the investigation and submitted the charge-sheet.

7. In view of the above, the Application needs to be allowed. Accordingly, it is allowed in terms of prayer clause 'A'. Rule made absolute in above terms. The Criminal Application is disposed of.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

Sameer