

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.509 OF 2015

IN

CRIMINAL APPEAL NO.275 OF 2015

Hemraj Pralhad Nirmal ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

CRIMINAL APPEAL NO.334 OF 2015

Mrs.Kanchan Hemraj Nirmal ... **Appellant**

V/s.

Hemraj Pralhad Nirmal & Ors. ... **Respondents**

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Mr.Niranjan S. Mundargi, Advocate for the Applicant.

Mr.Prashant D. Patil, Advocate for the Appellant in
APEAL/334/2015.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 18th JUNE 2018.

P.C. :

1 The applicant, who was working as Police Naik and a convict for the offence punishable under Section 498(A) of the Indian Penal Code in Special (Atrocities) Case No.7 of 2012 on

21/01/2015 by the learned Additional Sessions Judge, Raigad at Alibag, by this application, is praying for stay to his conviction.

2 Heard Shri.Mundargi, the learned Counsel appearing for the applicant at sufficient length of time. He vehemently argued that after due trial, the application is acquitted of the offence punishable under Section under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (Hereinafter referred to as “Atrocities Act” for the sake of brevity), and, therefore, if evidence of the prosecution is appreciated ignoring the same so far as this offence is concerned, then the offence punishable under Section 498(A) of the Indian Penal Code can be made out. For this purpose, the learned Counsel drew my attention to the evidence adduced by the prosecution witnesses including that of P.W.No.1 Kanchan – wife, P.W.No.2 Vidya, sister of Kanchan, P.W.No.3 Ranjana, mother of the wife, P.W.No.4 Nitin Bhagat, an alleged eye-witness and P.W.No.6 Neeta Sohoni, the another alleged eye-witness. The learned Counsel further argued that so far as evidence of First Informant Kanchan and her sister P.W.No.2 Vidya is concerned, material evidence against the applicant/accused has surfaced on record by way of omissions. The allegations are magnified in subsequent statements by the prosecution witnesses. The evidence if taken as it is, is not constituting the offence held to be proved against the present applicant. The present applicant was selected

for deputing him to the training for the post of the Police Sub-Inspector. Because of the conviction recorded against him, by the learned trial Court, he is out of employment and, as such, considering nature of evidence against the present applicant, he is entitled to have stay to the conviction recorded against him.

3 The learned Additional Public Prosecutor opposed the application by contending that the applicant is already dismissed from service in the wake of conviction recorded against him in the year 2015 itself and, as such, there is no question of he being deputed now to the training for the post of the Police Sub-Inspector. The learned Additional Public Prosecutor further argued that this is not the stage when evidence adduced by the prosecution can be re-appreciated and revalued. At the time of final hearing this exercise is required to be undertaken and if the applicant is ultimately succeed, he shall be entitled for the resultant benefit.

4 I have carefully considered the rival submissions and also perused the record made available. The offence held to be proved is one punishable under Section 498(A) of the Indian Penal Code. The expression 'cruelty' takes into its sweep both 'mental' as well as 'physical' agony. The concept of cruelty varies from people to people and place to place. It differs according to socio-economic status of the persons involved in it. The question

whether the acts complained of are acts of cruelty is required to be determined from the whole facts and relationship between the parties. The term 'cruelty' as defined by Section 498(A) of the Indian Penal Code postulates such conduct and treatment so as to cause reasonable apprehension to the mind of the wife that her living with her husband and in-laws will be harmful and injurious to her life.

5 The application in hand is for stay to the conviction and it is well settled that unless a clear case of gross injustice and irreversible consequences is made out, there cannot be stay to the conviction. It has to be granted in an exceptional case.

6 Considering the fact that we are in the limited arena of stay to the conviction, it will not be proper to evaluate the merit of the prosecution case by considering whether the evidence as adduced by the prosecution witnesses is trustworthy or not so as to infer guilt of the applicant/accused. Suffice to state that ocular evidence consists of that of the victim, her sister, mother as well as two eye-witnesses, one of which is the neighbour of the parental family of the victim. After due trial, the offence punishable under Section 498(A) of the Indian Penal Code is held to be proved though the learned trial Court has held that the offence punishable under Section 3(1)(10) of the Atrocities Act, is not proved against the accused persons including present applicant. It is apposite to

note that the FIR came to be lodged on 25/10/2011 by P.W.No.1 Kanchan, wife and subsequent thereto a legal notice came to be issued on 15/11/2011 in which there was no reference to the casteist abuses by the accused persons.

7 Considering the nature of evidence and the fact of the case, it cannot be said that this is not a case of gross injustice and irreversible consequences, if the conviction is not stayed, particularly when in the year 2015 itself, the applicant/accused has been removed from the service. Therefore, the Order :

ORDER

- (i) The application is rejected.

- (ii) Considering the nature of controversy involved in the main appeal and the fact of conviction of the applicant for the offence punishable under Section 498(A) of the Indian Penal Code, despite his acquittal for the offence punishable under Section 3(1)(10) of the Atrocities Act, hearing of the appeal is expedited.

(A.M.BADAR J.)