

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**REVISION APPLICATION No. 280 OF 2014
WITH
CRIMINAL APPLICATION No. 573 OF 2017
IN
REVISION APPLICATION No. 280 OF 2014**

Ajay Ratan Mhatre ... Applicant
VS.
The State of Maharashtra & Anr. ... Respondents

Mr. Daulat G. Khamkar, Advocate for the applicant.
Ms. Veera Shinde, APP for respondent No. 1/State.
Mr. Ajit M. Savagave, Advocate for respondent No. 2.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 28th November, 2018**

P.C. :

This Revision Application is filed against the judgment and order dated 14th May, 2013 passed by 11th Judicial Magistrate, First Class, Thane in R.C.C. No. 200 of 2012 and also the judgment and order dated 11th June, 2014 passed by the learned Additional Sessions Judge-9, Thane in Criminal Appeal No. 219 of 2013 thereby confirming the conviction of the applicant/husband under section 377 of Indian Penal Code.

2. The applicant and respondent No. 2 are husband and wife. Respondent No. 2/wife has filed the complaint and the offence was

registered against the husband and his relatives under section 498A r/w. 34 of Indian Penal Code and further the offence was registered against the husband under section 377 of Indian Penal Code. The learned 11th Judicial Magistrate First Class, by judgment and order dated 14th May, 2013 has convicted the husband for the offence under section 498A and sentenced to undergo S.I. for two years to to pay of Rs.5,000/-, i/d. to suffer S.I. for 15 days. The applicant is also convicted under section 377 of Indian Penal Code and is sentenced to undergo S.I. for 3 years and to pay fine of Rs.7,000/-, i/d. to suffer S.I. for 20 days. The applicant filed Criminal Appeal No. 219 of 2013 challenging the said order, in which the learned Additional Sessions Judge, Thane set aside the conviction against the applicant under section 498A of Indian Penal Code but maintained conviction under section 377 of Indian Penal Code. Against this judgment and order, the applicant has filed Revision Application and respondent No. 2/wife has filed Appeal against the acquittal of applicant/husband from section 498A. The said Criminal Appeal is admitted and is pending before the High Court.

3. During the pendency of this Revision Application, the learned

counsel for the applicant/husband and the learned counsel for respondent No. 2/wife pointed out that both the parties have filed consent terms in Marriage Petition No. 597 of 2013 filed by the wife in the Court of learned Civil Judge Senior Division at Kalyan. The said consent terms dated 2nd August, 2017 are taken on record in the said Marriage Petition. As per the consent terms, the parties have agreed that they will settle all the disputes amicably and respondent/wife will withdraw Criminal Appeal which she has filed against the judgment of acquittal passed by the Sessions Court.

4. The learned counsel for the applicant/husband relies on the judgment of the Hon'ble Supreme Court in the case of **Narinder Singh & Ors. vs. State of Punjab & Anr., reported in 2014 Cri. L.J. 2436.**

5. The learned counsel for the respondent/wife today produces the affidavit of respondent/wife dated 10th September, 2018 where she submits that she has no objection for quashing and setting aside the conviction order challenged in the present Criminal Revision Application. The learned counsel for the respondent, while assisting the Court, has relied on the judgment of this Court

in the case of **Kiran Tulshiram Ingale vs. Anupama P. Gaikwad & Ors.**, reported in **2006 Cri. L.J. 4591**. He also relies on the judgment of Supreme Court in the case of **G.V. Rao vs. L.H.V. Prasad**, reported in **2000(3) SCC 693**.

6. Heard the submissions of the learned counsel for the applicant and the learned counsel for the respondent.

7. In the case of **Narinder Singh** (*supra*), the Supreme Court has laid down the principles guiding the Courts below while giving adequate treatment to the settlement matters and exercising its power under section 482 of Cr.P.C. The Supreme Court has laid down that the powers under section 482 are to be distinguished from the powers of the Court under section 320 of the Code. Section 320 though is a specific section where the offences which are compoundable are specifically enlisted, yet some offence which are not mentioned in Section 320 can be compoundable under section 482, however, such powers are to be exercised sparingly and with caution. The guiding facts in such cases are (i) to secure the ends of justice; (ii) to prevent the abuse of process of any Court. If the powers is exercised under section 482, whether it will involve serious repercussion so also it is also to be considered

whether the offence is heinous and serious which is going to be compromised.

8. In the case of **Kiran Tulshiram Ingale** (*supra*), the Division Bench of this Court has expressed that while defining the scope of the High Court under section 482 and section 320 of Cr. P.C. has observed that the High Court powers to pass effective orders in consonance with the judgment that the Supreme Court holds in view of judgment in (2000) 3 SCC 693 by exercising inherent powers and Section 320 of the Code does not limit or restrict the powers of the High Court under section 482 of Cr. P.C.

9. In the case of **G.V. Rao** (*supra*), the issue was that the wife was cheated by husband and there was misrepresentation of caste for the purpose of marriage. The Supreme Court has observed that -

“There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other

reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

10. In the present case, the applicant is acquitted from the offence of cruelty. The conviction under section 377 of Indian Penal Code is maintained. By way of abundant precaution, I have gone through the record of the case and considered the allegations made by the respondent/wife and in view of her affidavit filed before this Court, I am of the view that the conviction under section 377 of Indian Penal Code can be set aside, as the parties, who are husband and wife, have decided to separate amicably and to lead future life peacefully. Hence, the judgment and order dated 14th May, 2013 passed by 11th Judicial Magistrate, First Class, Thane in R.C.C. No. 200 of 2012 and also the judgment and order dated 11th June, 2014 passed by the learned Additional Sessions Judge-9, Thane in Criminal Appeal No. 219 of 2013 are hereby quashed and set aside. The parties are directed to take appropriate steps in view of the consent terms filed before the learned Civil Judge Senior Division, Kalyan.

11. The learned counsel for the applicant/husband makes statement that within four weeks, the steps will be taken before the learned Civil Judge Senior Division, Kalyan so also the learned counsel for the respondent/wife submitted that the respondent/wife will take steps for withdrawal of the Appeal.

12. Criminal Revision Application is disposed of.

13. Criminal Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)