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

CRIMINAL REVISION APPLICATION NO. 658 OF 2017

Mahesh Jaykumar Mavale

.....Applicant

V/s.

The State of Maharashtra and Ors

.....Respondents

Mr. Vikramsinh Yadav for the applicant.

Mr. Santosh Musale for respondent nos. 2 & 3.

Mr. H. J. Dedhiy App for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 25, 2018.

P.C.

In sessions case no. 1191 of 2016, for the death of the applicant's sister, respondents were charge-sheeted for offence punishable under section 498-A, 306 r/w 34 of the Indian Penal Code. In an application for discharge under section 227 of the Code of Criminal Procedure, 1973, the Court of Assistant Sessions Judge, vide impugned order dated 13/09/2017 discharged original accused nos. 2 & 3 i.e. father-in-law and mother-in-law. As such, this

application.

2 The learned counsel for the applicant-original complainant would urge that while recording finding of discharge for offence under section 306 and 498-A of the Indian Penal Code, the learned Court below has only dealt with the satisfaction required under section 306 i.e. abetment to suicide and there are no findings whatsoever recorded *quo* necessary ingredients of section 498-A of the Indian Penal Code. According to him, the reasons for ordering discharge the accused for offence under section 306 of the Indian Penal Code cannot be read for justifying the order of discharge for offence under section 498-A of the Indian Penal Code. Apart from above, he could press into service section 113A of the Indian Evidence Act so as to claim that order of discharge for offence under section 306 of the Indian Penal Code is not sustainable.

3 The learned APP fairly concedes that the learned Court below has not recorded any finding *quo* discharging accused persons for offence under section 498-A of the Indian Penal Code.

4 The learned counsel for the respondent-accused would urge that the evidence and reasons recorded by the Court below are required to be appreciated as a whole and not in piecemeal and there are sufficient justification for discharge under section 498-A of the Indian Penal Code also.

5 Having considered submissions, the only consideration which is reflected in para 29 of the impugned order for discharging the accused, also for offence under section 498-A of the Indian Penal Code is no *prima facie* case could be noticed for framing of charge. Apart from above, there are no findings whatsoever are recorded by the learned Court below while ordering discharge of the accused persons for offence under section 498-A of the Indian Penal Code.

6 In that view of the matter, in my opinion, without going into the merits of the matter, order dated 13/09/2017 passed by the learned Trial Court, granting discharge to the respondent-accused, for an offence under section 306 of the Indian Penal Code, needs to

be quashed and set aside, with direction to the learned Court below to deal with the application for discharge afresh.

7 As such, the order impugned dated 13/09/2017 hereby quashed and set aside. Application Exhibit 23 stood restored to the file of Assistant Sessions Judge, Pune dealing with sessions case no. 1191 of 2016. The Sessions Judge is directed to decide such application afresh after granting opportunity to the respective parties. Revision stands disposed of.

8 It is clarified that this Court has not examined the merits of the order impugned as regards the satisfaction of the ingredients *qua* section 306 of the Indian Penal Code. Liberty to the aggrieved party to question the order before this Court afresh.

[NITIN W. SAMBRE, J.]