

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

CRIMINAL APPLICATION [APL] NO.197 OF 2018

[Shri Sitaram s/o Ramesh Lande and Sau. Kavita @ Jayashri w/o Sitaram Lande .vs. State of
Maharashtra, through Police Station Officer, Narkhed, Tahsil-Narkhed, District-Nagpur]

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

Court's or Judge's orders

Shri J.D. Bastian, counsel for the applicants,
Shri A.M. Joshi, APP for the non-applicant-State.

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CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : APRIL 11, 2018.

Heard.

By this criminal application the applicants seek the quashing and setting aside of the judgment of the Judicial Magistrate, First Class, Narkhed dated 29.3.2017 convicting the applicant no.1 for the offence punishable under Section 498-A of the Penal Code and sentencing him to suffer rigorous imprisonment for one month and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for 10 days.

The marriage of the applicants was solemnized as per the customs prevailing in their community on 27.5.2015. A complaint was lodged by the applicant no.2 against the applicant no.1 i.e. her husband on 28.10.2015 that the applicant no.1 and her in-laws were treating her with cruelty. It was alleged in the complaint that the applicant no.1 and her in-laws used to ask her to bring money from her parents for purchasing a motorcycle. On the basis of the complaint lodged by the applicant no.2, the F.I.R. was registered against the applicant no.1. The chargesheet was filed before the Judicial Magistrate, First Class, Narkhed. After considering the evidence tendered by the parties on record, the learned JMFC convicted the applicant no.1 for the

offence punishable under section 498-A of the Penal Code while acquitting her in-laws.

The applicant no.1 has filed an appeal against the judgment of the Judicial Magistrate, First Class, Narkhed and the same is pending. It is stated on behalf of the applicants, by placing reliance on the law laid down in the judgment reported in **2006 Cri.L.J. 4591 (Kiran Tulshiram Ingale .vs. Smt. Anupama P. Gaikwad and others)** and the full bench judgment of this court reported in **2008 (2) Mh.L.J. 856 (Abasaheb Yadav Honmane .vs. State of Maharashtra:Ashwini Abasaheb Honmane)** that the judgment of conviction of the applicant no.1 could be set aside by the consent of the parties, specially when the conviction is for the offence punishable under section 498-A of the Penal Code and the parties have compromised the matter. It is stated that it is held in the judgment by the Division Bench of this court in **2006 Cri.L.J. 4591**, by relying on the judgment of the Hon'ble Supreme Court that where a husband is convicted for the offence punishable under section 498-A of the Penal Code and during the pendency of the appeal before the appellate court the parties settle the matter, the judgment of conviction could be set aside by invoking the jurisdiction under section 482 of the Code of Criminal Procedure. It is stated that the view of the Division Bench in the judgment reported in **2006 Cri.L.J. 4591** was upheld by the full bench in the judgment reported in **2008 (2) Mh.L.J. 856**. It is stated that the applicants have settled their dispute and a joint petition is filed by the applicants for a decree of divorce by consent under section 13 (B) of the Hindu Marriage Act on 29.01.2018. It is stated that in the peculiar circumstances of the case, when one of the conditions on which the parties are seeking a divorce by mutual consent is that the applicant no.2 would take steps for ensuring that the judgment of conviction of the applicant no.1 is set aside, it would be necessary to set aside the said judgment. It is stated that in order to

prevent the abuse of the process of the court and to secure the ends of justice, it would be necessary to quash and set aside the judgment of Judicial Magistrate, First Class, Narkhed convicting the applicant no.1 for the offence punishable under Section 498-A of the Penal Code.

The parties are personally present in the court today. The applicant no.2 has stated that she has joined the applicant no.1 in filing the petition for a decree of divorce by consent. She states that she wishes to live peacefully in future and the judgment of conviction of the applicant no.1 should be quashed and set aside by compounding the offence.

In the circumstances of the case, as stated hereinabove, it would be necessary to quash and set aside the judgment of the learned Judicial Magistrate, First Class, Narkhed dated 29.3.2017 convicting the applicant no.1 for the offence punishable under section 498-A of the Penal Code. In the circumstances of the case, when the applicants have settled the matter and they wish to reside peacefully in future, the judgment is liable to be quashed and set aside. Hence, by relying on the judgments of the Division Bench of this court reported in **2006 Cri.L.J. 4591** and the full bench of this court reported in **2008 (2) Mh.L.J. 856**, the proceedings against the applicant no.1 and the judgment of conviction of the applicant no.1 dated 29.3.2017 passed by the learned Judicial Magistrate, First Class, Narkhed are hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE