

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

CRIMINAL REVISION APPLIATION NO. 98 OF 2005

Dnyanoba s/o Balbhim Gore
Age : 35, Occu : Agriculture,
R/o Maligalli, Tq. Patoda,
Dist. Beed.

... Applicant
(Original Accused No.1)

Versus

State of Maharashtra

... Respondent-State

.....
Mr. S. S. Bora, Advocate for the Applicant.
Mr. B. V. Virdhe, APP for Respondent-State.
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**CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2019**

ORAL JUDGMENT :-

1. The petitioner/original accused no.1 has preferred this Criminal Revision Application against the judgment and order of conviction dated 16.01.2003 passed by Judicial Magistrate, First Class, Patoda in Regular Criminal Case No.147 of 1999 under Section 498-A r/w 34 of IPC, thereby sentencing him to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default to suffer R.I. for six months and the said order is confirmed by the I Ad-hoc Additional Sessions Judge, Beed by judgment and order dated 22.02.2005 passed in Criminal Appeal No.14 of 2003.

2. Brief facts of the prosecution case are as under:

a. The complainant Vithabai got married with the applicant prior to 1999 and after marriage, she had started cohabiting with the accused at Patoda. She was treated well for the initially period of two/three years. However, thereafter she was subjected to ill-treatment on account of non-fulfillment of unlawful demand of Rs.30,000/- for repayment of house loan. She could not fulfill the said demand due to poverty of her parents and thus she was subjected to beating, starvation etc. Even she was driven out from her matrimonial house. On the basis of her complaint, crime came to be registered for the offence punishable under Section 498-A read with Section 34 of IPC and after due investigation, the Investigating Officer submitted charge sheet against the present applicant and five others for having committed the offence punishable under Section 498-A r/w 34 of IPC.

b. Learned Magistrate framed charge under Section 498-A r/w 34 of IPC. The contents of the charge were read over and explained to the accused in vernacular. The accused pleaded not guilty. Their defence was of total denial and they claimed to be tried. According

to them, they never ill-treated the complainant on any count and there was no demand as such.

c. The prosecution has examined five witnesses to substantiate the charge leveled against the accused. After completion of the evidence of prosecution witnesses, statements of the accused came to be recorded under Section 313 of Criminal Procedure Code, 1973. After hearing both sides, learned Magistrate by the judgment and order dated 16.01.2003 passed in R.C.C. No. 147 of 1999, convicted the accused for the offence punishable under Section 498-A r/w Section 34 of IPC. So far as the present applicant/accused no.1 is concerned, he was sentenced to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default, to suffer R.I. for six months. The other accused persons, though convicted under Section 498-A r/w 34 of IPC, came to be released on probation by the learned Magistrate.

d. Being aggrieved by the same, the present applicant preferred Criminal Appeal No. 14 of 2003. The learned Ad-hoc Additional Sessions Judge, Beed, by judgment and order dated 22.02.2005, dismissed the appeal. Hence this Criminal Revision Application.

3. Learned counsel for the applicant/original accused no.1 submits that though there is evidence to some extent about the unlawful demand made by the accused for repayment of loan, however, there is no evidence about coercion to the complainant Vithabai on account of non-fulfillment of the said demand. PW1-Vithabai, PW2-Bhanudas and PW3-Sumanbai (PW2 and 3 parents of the complainant) have deposed about the unlawful demand of Rs.30,000/- made two/three years after marriage. Learned counsel submits that however, thereafter, the complainant Vithabai had cohabited with the applicant in her matrimonial house for near about seven years. There are general allegations as to the ill-treatment in the form of starvation, beating etc. without specifying any particular event. Learned counsel submits that accused no.6, who has been given benefit of the Probation of Offenders Act, 1958 by the court below, is none else but the real sister of complainant Vithabai. It is difficult to believe the prosecution story that one daughter was subjected to ill-treatment on account of non-fulfillment of certain demand from her parents, however, the another daughter given in marriage in the same house was not subjected to ill-treatment. Learned counsel submits that the courts below have not appreciated this aspect in its proper perspective

and only given importance to the fact that whether complainant Vithabai has disclosed about the ill-treatment to accused no.6. Apart from this, there are absolutely no details as to what sort of loan was availed by accused no.1 and if the same was not repaid for near about seven years, in what manner complainant Vithabai was subjected to ill-treatment so as to attract clause (b) of Section 498-A of IPC. Learned counsel submits that except PW1-Vithabai, the parents have not stated anything about the ill-treatment. So far as the evidence of PW1-Vithabai is concerned, there are general allegations as to the ill-treatment without specifying any particular incident. The courts below have not considered this aspect and convicted the applicant/accused no.1 without any basis. The application thus deserves to be allowed by setting aside the judgment and order of conviction passed by the courts below.

4. Learned counsel for the applicant, in order to substantiate his contention, placed reliance on the following cases:

- a. *Indrajit Sureshprasad Bind and Others vs. State of Gujarat*, reported in (2013) 14 SCC 678.
- b. *Ramu Shankar Wagh vs. State of Maharashtra*, reported in 2014 All M.R. (Cri) 1792.

5. Learned APP has supported the judgment and order of conviction passed by the courts below. He submits that there is sufficient evidence as to the unlawful demand of Rs.30,000/- for repayment of loan amount. PW1, PW2 and PW3 have consistently deposed about the said unlawful demand and their evidence is trustworthy and reliable. The courts below have rightly relied upon the evidence of PW1-Vithabai and her parents PW2 and PW3. Accused No.6 has also disclosed about the ill-treatment being extended to the complainant Vithabai by the present applicant to her parents PW2 and PW3 and they have also deposed to that effect before the court. There is no substance in this revision application. The revision application is liable to be dismissed.

6. On careful perusal of the prosecution evidence, it appears that though PW1 to PW 3 have consistently deposed about the unlawful demand of Rs.30,000/- by the applicant/accused no.1 for repayment of loan amount, there is no satisfactory evidence as to the coercion offered to complainant Vithabai on account of non-fulfillment of the said demand. There are general allegations about beating and starvation without specifying any particular incident. As per the prosecution story, if PW1-Vithabai was treated well for

about two/three years after marriage and she had cohabited with applicant/accused no.1 for near about seven years in her matrimonial home. It is therefore expected from the prosecution witnesses to specify certain incidents about coercion on account of non-fulfillment of the said demand. Furthermore, there are also no details as to for what purpose the said loan was availed by applicant/accused no.1. It is also difficult to believe that even though two daughters are given in marriage in the same house to different accused persons, only complainant Vithabai was subjected to ill-treatment on account of non-fulfillment of the said demand. If one daughter came to be ill-treated on account of non-fulfillment of the said demand by her parents, then it is difficult to believe that another daughter was co-habiting happily in the same house even though there was non-fulfillment of the said demand for repayment of loan. It is also pertinent that the said sister of complainant Vithabai is also implicated as an accused even though none has deposed specifically against her. On the other hand, the parents have deposed before the court below that accused no.6 has disclosed to them about the ill-treatment being extended to complainant Vithabai by the accused on account of non-fulfillment of the said demand.

7. In the case of **Indrajit Sureshprasad Bind and Others** (supra), relied upon by learned counsel for the applicant, the Apex Court in para 9 of the judgment has made the following observations:

“9. To establish the offence of dowry death under Section 304-B IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498-A IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in clauses (a) and (b) of the Explanation to Section 498-A IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW3 to the deceased on 25.04.2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18.05.2004.”

8. In the case of ***Ramu Shankar Wagh*** (supra), relied upon by learned counsel for the applicant, this Court has held that the aspect of cruelty having not been proved, the penal provisions of Section 498-A and 306 are not attracted.

9. In the instant case, I find no satisfactory evidence about the ill-treatment. Sub-section (b) of Section 498-A, which is relevant for the present discussion, is reproduced herein below:

“498-A(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.”

10. In a case ***Ravindra Pyarelal Bidlan and others vs. State of Maharashtra***, reported in ***1993 Cri.L.J. 3019***, this Court at its principal seat at Bombay has in para 26 made the following observations:

“26. Sub-clause (b) of the explanation to S. 498A provides that cruelty means harassment of the woman where such harassment is with a view to correcting her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any

person related to her to meet such demand. Sub-clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet an unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand of property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the berating or harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of the husband or the in-laws”

11. It is thus clear that mere unlawful demand for any property or valuable security is not made punishable in Sub-section (b) of Section 498-A, but if the woman is subjected to harassment with a view to coercing her or any person related to her to meet such valuable demand or on account of failure by her or any person related to her to meet such demand, is made punishable. In the instant case, there was a long period of seven years and as such, on the basis of general allegations about beating and starvation the conviction recorded by the courts below cannot be upheld.

12. In view of the above discussion and considering the ratio laid down by the Apex Court in the aforesaid case, I proceed to pass the following order.

ORDER

- I. The criminal revision application is hereby allowed.
- II. The judgment and order of conviction passed by the Judicial Magistrate, First Class, Patoda dated 16.01.2003 in R.C.C. No. 147 of 1999 under Section 498-A r/w 34 of IPC, sentencing thereby the applicant/accused to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default to suffer R.I. for six months and the judgment and order dated 22.02.2005 in Criminal Appeal No. 14 of 2003 passed by the I Ad-hoc Additional Sessions Judge, Beed confirming thereby the judgment and order of conviction in R.C.C. 147/1999 are hereby quashed and set aside.
- III. The applicant/accused no.1 Dnyanoba s/o Balbhim Gore is hereby acquitted of the offence under Section 498-A r/w 34 of IPC in R.C.C. No. 147 of 1999.
- IV. The fine amount, if deposited by the applicant/accused, shall be refunded to him.
- V. The criminal revision application is accordingly disposed of. Rule made absolute.

(V. K. JADHAV, J.)

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