

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 746 OF 2019

Dattu Baban Bhoknal .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

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Mr. Raviraj R. Paramane with Vaibhav Gaikwad for the applicant.
Mr.F.R. Shaikh, APP for the State.
Ms.Smita R.Gaidhani for respondent no.2.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 31st JULY 2019

P.C:-

1 Heard learned counsel for the applicant, learned counsel for respondent no.2 and learned APP for the State.

2 Petition is filed for quashing and setting aside the FIR bearing C.R.No.I-294 of 2019 registered with Adgaon Police Station, Nashik at the instance of respondent no.2 for an offence punishable under Section 498A and 420 of the IPC. The copy of the FIR is annexed at Exhibit-A, page 19. We have perused the same. The allegations in the FIR in brief are as follows :-

Tilak

Respondent no.2 originally hails from Redgaon, Taluka Chandvad, District Nashik. She is employed in Nasik Rural Police as a Constable with effect from June 2012. The respondent no.2's parents, brothers and sister in law are residing at Redgaon. In the year 2015, the applicant's felicitation was arranged at Village Redgaon as he was conferred with the Army medal. At that time, Respondent no.2 got acquainted with the applicant and thereafter, this acquaintance resulted into relationship of love. The applicant and respondent no.2 thereafter decided to marry each other and accordingly, they married in a Jai Ambe Mangal Karyalaya at Alandi as per Hindu Rites and Customs. The respondent no.2 alleged in the FIR that she and applicant were living as husband and wife after the marriage. However, the marriage was not made known to the applicant's parents and therefore, they decided to marry again in presence of all relatives. Respondent's parents accordingly decided that they will perform the marriage in presence of the relatives on 9th February 2019 at Village Neemgavan. Respondent no.2's brother also booked the Samarth Lawns for the purpose of marriage ceremony. However, applicant did not turn up for marriage and he informed the respondent no.2 that he is not well and admitted in the hospital. The FIR further discloses that the applicant thereafter again agreed to perform the marriage with respondent no.2 in public on 24th February 2019.

On 24th February 2019 also, the applicant backed out and told respondent no.2 that he will not marry her. FIR further alleges that the applicant informed her that once he has married her, again, we will not perform the marriage ceremony. In the light of these allegations, the subject FIR is registered for an offence under Section 498A and 420 of the IPC.

3 Learned counsel for the applicant does not dispute that applicant is married with respondent no.2. He submits that today also, the applicant is the husband of respondent no.2 and respondent no.2 is his legally wedded wife. The applicant has annexed the Marriage Certificate at page no.29 which also supports his contention that he has married with respondent no.2.

4 The allegation of offence under Section 420 is made only on the ground that the applicant did not cooperate with the respondent for the marriage in public which he agreed to perform on 9th February 2019 and 24th February 2019.

5 In our considered view, once the legal marriage is performed between applicant and respondent no.2, there was no necessity of the marriage in public. Even the applicant and respondent no.2 had agreed for marriage in public, non-performing thereof will not attract the offence under Section 420 of the IPC. Learned counsel for respondent no.2 submits

that applicant and respondent no.2 are not being recognized as husband and wife. However, we cannot accept this submission in light of the statement made by learned counsel for the applicant. Respondent no.2 is always at liberty to take appropriate action against the applicant including the action for restitution of conjugal rights.

6 So far as offence under Section 498A is concerned, we find no allegation which will attract the provisions of Section 498A of the IPC. Learned counsel for the respondent no.2 submitted that in the respondent no.2's supplementary statement, she has alleged dowry demand made by the applicant and therefore, the case is covered under Explanation (a) of Section 498A.

7 We have perused the said supplementary statement of the respondent no.2. It is true that in the statement respondent no.2 alleged that applicant demanded Rs.8 to 10 lakhs from her parents. However, the said amount was demanded for enabling the applicant to participate in the Olympic games. In the supplementary statement, the respondent no.2 stated that she has deposited an amount of Rs.49,000/- in the account of applicant's brother. However, said amount was deposited by respondent no.2 voluntarily in the account of applicant's brother and there are no allegations that the applicant compelled her to deposit the same.

8 In the light of above, we are of the opinion that there are no dowry demands and the applicant's allegations are not covered by Explanation (b) of Section 498A of the IPC. Learned counsel submitted that respondent no.2's case is also covered under Explanation (a). We are unable to agree with this submission as neither the FIR nor her supplementary statement disclose either the respondent no.2 was driven to commit suicide or she suffered any grave injury or danger to life, limb or health. We are, therefore, of the opinion that no *prima facie* case is made out under Explanation (a) of Section 498A of the IPC.

9 In light of the above discussion, we are of the considered view that the FIR does not disclose any offence under Section 498A of the IPC.

10 The prosecution of the applicant would be abuse of process of law and accordingly, the subject FIR is quashed and set aside.

11 Criminal Application is allowed in terms of prayer clause (a).

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)