

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

**CRIMINAL REVISION APPLICATION NO.378 OF 2004**

Smt. Sharada Eknath Javre  
Age : 30 years, Occ. : Household,  
R/o Karajgaon, Tq. Newasa,  
Dist. Ahmednagar.

**... APPLICANT**

**VERSUS**

1. The State of Maharashtra  
(copy to be served on Public  
Prosecutor, High Court of Bombay  
bench at Aurangabad)
2. Eknath Dattatraya Jaware,  
Age : 33 years, Occ. : Agri.  
R/o Mamdapur, Tq. Rahata,  
Dist. Ahmednagar
3. Dattatraya Pandurang Jaware,  
Age : 59 years, Occ. : Agri.  
R/o. Mamdapur, Tq. Rahata,  
Dist. Ahmednagar.
4. Sushila Arun Fatke,  
Age : 35 years, Occ. : Household,  
R/o Karwandi, Tq. Newasa,  
Dist. Ahmednagar.
5. Meena Changdeo Gadhave,  
Age : 32 years, Occ. : Household,  
R/o Uttam Nagar, Cidco,  
Nashik, Dist. Nashik.

6. Bhimabai Dattatraya Jaware,  
Age : 55 years, Occ. : Household,  
Dist. Ahmednagar

... **RESPONDENTS**

.....  
Mr. V. R. Dhorde, Advocate for petitioner.  
Mr. A. A. Jagatkar, Advocate for respondent No.1-State.  
Mr. N. S. Shah h/f Mr. K. N. Lokhande, Advocate for respondent Nos.2, 3, 5  
and 6.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**Judgment reserved on : 3<sup>rd</sup> January, 2020.**

**Judgment pronounced on : 12<sup>th</sup> February, 2020.**

**JUDGMENT :**

. Present criminal revision application has been filed by the original informant under Section 401 of the Criminal Procedure Code challenging the acquittal of the respondents by learned Judicial Magistrate First Class, Court No.3, Shrirampur, Dist. Ahmednagar in R.T.C. No.276 of 2002 on 29-06-2004 for the offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. This Court has issued Rule on 07-07-2006.

3. Heard learned Advocate Mr. V. R. Dhorde for the applicant, learned APP Mr. A. A. Jagatkar for respondent No.1-State and learned

Advocate Mr. N. S. Shah holding for learned Advocate Mr. K. N. Lokhande for respondent Nos.2, 3, 5 and 6.

4. It has been vehemently submitted on behalf of the applicant-original informant that the learned Magistrate has not appreciated the evidence properly. The prosecution had, in fact, proved the case beyond reasonable doubt. There was sufficient evidence of the informant herself which was corroborated by her own letters at Exhibit-41 to 43 and then there is corroboration in respect of letter as well as whatever was communicated to the father of the informant by the father himself. As the offence under Section 498-A, which is mainly against the husband and the in laws, takes place within the four-corners of the house, the trial Court ought not to have insisted for examination of an independent witness. The testimony of the informant has been discarded on the ground that there is discrepancy between her evidence and the evidence of her father on the point of alleged illegal demand. The said discrepancy, in fact, was of trifling nature which ought to have been ignored. Both were consistent in saying that amount of Rs.1 Lakh was demanded, the purpose might be different. She has also stated about all the activities of harassment committed by the accused persons specifically. The statements in her examination-in-chief

have not shattered in her cross examination. The accused persons ought to have been convicted.

5. The learned Advocate appearing for respondent Nos.2, 3, 5 and 6 has supported the reasons given by the learned Magistrate while acquitting the accused persons. He submitted that there is exaggeration and material contradiction in the evidence of the prosecution witnesses. Except the wife nobody else has been examined to prove that the wife was harassed. Admittedly, her father was not present when the alleged acts were done. The testimony of PW-2 has been rightly held to be hearsay in nature. There is every doubt as regards those letters which have been produced at Exhibit-41 to 43, because the informant says that she is unable to remember where she had posted those letters.

6. It is to be noted that the informant has been examined at Exhibit-39 and she has reiterated the same facts which she has stated in her first information report. The marriage between accused No.1 and the informant was performed on 20-06-1994 and it is alleged by her that she was driven out of the house by the accused persons on 14-11-2002. She has deposed that she has two sons from accused No.1. On the day of her deposition, the elder son was aged 6 years and younger was 5 years old. In

her cross examination, she has stated that the birth date of her elder son Pramod is 03-12-1995 and that of younger son Gajanan is 12-06-1998. She has stated that after birth of her younger son, the accused had treated her properly for about 5 to 6 years. The question, therefore, arises as to what had suddenly happened after the period of 5 to 6 years after the second son was born, so that the relationship between the husband and wife were got so strained. In her examination-in-chief, the informant had stated that after the marriage accused No.1 had demanded amount of Rs.1 Lakh to her for purchase of tractor. She has not given the approximate date, month or year when for the first time the demand was made. But then she says that when she told that her parents are unable to fulfill the demand, her husband, father-in-law and mother-in-law had beaten her and then she says that she had conveyed the said incident to her father by letter. There is also exaggeration put forward by her regarding the fact that she was assaulted by her father in law by Tommy on the leg and by husband on right leg by iron rod (Pahar). The parents went to her matrimonial home and persuaded the accused persons and then she cohabited with accused No.1 till the year 2000. From this part of the testimony of the informant, it appears that it was not the regular feature that she was harassed by the accused persons by making the demand of Rs.1 Lakh. Another aspect that

is required to be seen is that according to her that amount of Rs.1 Lakh was required for the purchase of tractor. She has not stated that as amount of Rs.1 Lakh was short in the consideration amount of purchase of the tractor; it was demanded by her husband to her. It is hard to believe that even in the year 1994 onwards, the value of the brand new tractor would have been Rs.1 Lakh. Further in her cross examination, she has admitted that the accused had agricultural land at Wambori. The accused had sold it and then they had purchased a tractor. If the tractor was purchased from the consideration amount of the sale transaction of the said land, then where was the question of again demanding the amount for purchase of tractor by the accused persons. It is not the case of the prosecution that the tractor was to be purchased on loan or it was already purchased by obtaining loan and the amount of Rs.1 Lakh was the installment of the tractor. Surprisingly, the father of the informant in his testimony says that the said amount of Rs.1 Lakh was demanded as installment of the loan taken for the purchase of tractor. The Investigating Officer has not made any kind of investigation in respect of the fact that there was loan transaction by accused No.1 and what was the installment. It cannot be stated that the contradiction in respect of the amount required for purchase of tractor than the amount required for the mitigation of the installment; is a trifle

contradiction. If it would have been the installment, then note can be taken that the demand would have recurred and there would have been demand of the similar amount from time to time.

7. Though the informant has stated about beating given by her father-in-law by Tommy and by her husband with the help of iron rod, yet, it is to be noted that it is an improvement which was not at all told by the informant before the Investigating Officer or the person who had recorded the FIR. She has also not given the details as to when that incident had taken place. But when we consider her testimony, it gives an impression that the said incident had occurred somewhere around 14-11-2002, because she says that she had taken medical treatment in the hospital at Sonai on 15-11-2002. The medical certificate was not proved properly by examining the concerned witness.

8. The informant and her father have corroborated with each other on the point that the father had paid amount of Rs.25,000/- to the accused persons. No evidence to support this contention has been ever produced. It appears that she has filed maintenance petition against accused No.1, suit for partition against the accused persons, thus she is pursuing her legal remedies. But it is to be noted that when she admits

that accused No.5 having two sons and husband resides at Nashik, further accused No.4 is also residing at Kharwandi, Nashik with her husband, that means in the ordinary course, the married sisters of the husband of the informant were residing at their matrimonial home. It is hard to believe that they would have taken active part in commission of any crime when they were not at all residing with the informant and her husband.

9. The informant has admitted that her father was along with her when she lodged the report with the police and again it was asked about the contents of the FIR, then she says that the contents of the FIR were dictated by her father.

10. As aforesaid, her testimony though apparently corroborated her father, yet, materially differs on vital points. Father of the informant was not remembering as to when he had paid amount of Rs.25,000/- to the accused. He has also made improvement in his testimony as compared to his statement under Section 161 of the Code of Criminal Procedure.

11. As regards the medical evidence is concerned, the medical officer had noted four injuries on the person of the informant when she was examined by him on 15-11-2002. However, it is to be noted that he has

stated that the duration of the injuries was more than 24 hours. Though in his examination-in-chief he has stated that those injuries are possible due to assault by iron rod or iron Tommy, in his cross examination, he has admitted that it is possible that if the blow of iron rod is given on leg, then there is possibility of fracture. The injuries noted by him were possible by fall on rough substance. Therefore, it cannot be equated that those injuries had occurred on 14-11-2002.

12. By such appreciation, it can be seen that the only conclusion that can be drawn is that the prosecution had failed to prove the offence against the accused persons and therefore, the learned Magistrate had rightly acquitted them.

13. There is no merit in the present criminal revision application. It deserves to be dismissed. Accordingly, it is dismissed. Rule is discharged.

**[SMT. VIBHA KANKANWADI, J.]**

SCM