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

CRIMINAL REVISION APPLICATION NO.96 OF 2002

Shri Sitaram Sayaji Gavit,
Age 41, an adult, Indian Inhabitant,
a Medical Practitioner attached to
the Municipal Corporation, Nashik,
Permanent resident of Nishigandha,
Takli Road, behind Mithila bungalow,
Upnagar, Nashik (At present in Nashik
Central Prison).

... Applicant

Versus

State of Maharashtra
(Through Inspector of Police,
Bhadrakali Police Station, Nashik)

... Respondent

Mr. Chetan Alai a/w Mr. Surel Shah for the Applicant.
Ms. P.P. Shinde, APP for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 28th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard the learned counsel for the applicant and the learned
APP for the Respondent - State.

2 The applicant herein is convicted for the offence punishable
under section 498A of the Indian Penal Code and sentenced to suffer
Rigourous Imprisonment for two years by the Chief Judicial Magistrate,
Nashik vide judgment and order dated 2nd September 2000. Being

aggrieved by the said judgment and order, the applicant herein had preferred Criminal Appeal No.48 of 2000 before the Additional Sessions Judge at Nashik. The said appeal was dismissed vide judgment and order dated 25th February 2002. Hence, this revision application. Such of the facts necessary for the decision of this appeal are as follows :-

3 On 1st June 1994, Srilekha Gavit, wife of the present applicant lodged a report at Bhadrakali Police Station, Nashik alleging therein that she was married to the present applicant on 27th January 1991. It was a love marriage. The couple was blessed with a son on 11th November 1991. It was alleged that the mother of the complainant had paid Rs.10,000/- towards dowry however, the applicant – husband expected much more. That he had harassed her on account of demand of dowry. The complainant had filed non-cognizable offence against the applicant on four occasions prior to registration of First Information Report. In fact, she wanted to carry on her marital life peacefully and therefore, she was constrained to compromise the said cases and waived the conduct of the applicant. It is alleged that on 30th May 1994 the dispute between the couple had reached a boiling point and that she was driven out of the house. She lodged FIR with Bhadrakali Police Station on 30th May 1994.

4 The father of the complainant had expired. The mother of the

complainant had abandoned her and she was brought up by her maternal aunt and uncle. That according to the prosecution, the complainant had written several letters to her maternal aunt informing her about the ill-treatment and harassment meted out to her at the hands of the present applicant.

5 After completion of investigation, charge sheet was filed against the accused and the case was registered as Regular Criminal Case No.190 of 1994. The prosecution examined 4 witnesses, including the complainant, to bring home the guilt of the accused.

6 It is pertinent to note that the prosecution had placed implicit reliance upon the letters written by the complainant to her maternal aunt Mrs. Archana Salunkhe. However, the recipient of letter i.e. Mrs. Salunkhe was not examined by the prosecution.

7 It is a matter of fact that the complainant was a Hindu. The applicant belongs to Adivasi Community and his native place was Dodipada. The applicant was qualified in the discipline of medicine with qualification of M.D. and was initially working with Ruby Hospital.

8 PW1 – complainant herself had deposed before the Court

about the incidents in which she was harassed by the applicant. Letters written by her to Archana Salunkhe were marked at Exhs.31 to 36. The recipient of the letter was not examined and she could offer no explanation as to how the letters remained in her custody. According to her, she had informed Advocate Jaibhave about the ill-treatment meted out to her. She had also informed one Dr. Gaikwad who happened to be friend of the accused and had requested him to convince her husband to behave properly. The complainant – wife was a Commerce Faculty Graduate at the time of marriage and completed her Graduation in Law after marriage. She had completed two years of Law at Pune i.e. when the applicant was working with Ruby Hospital. She had met the applicant at Ruby Hospital as she was working with Shri Parvez Grant owner of Ruby Hospital, Pune since 1988.

9 She was not acquainted with the customs and rituals of Adivasi community prior to the marriage. She has admitted in the cross-examination that the applicant was not in favour of her practicing the profession of Law at least till the child attains age of 4 – 5 years. She has denied the allegations that she used to leave the child with the neighbour when she went for her studies or other activities. However, it is admitted that the son was admitted in school in June 1994 and she had started

practice in the year 1994. She has denied the allegations that she has also assaulted the accused. She has admitted that she used to give money to her mother when she was residing with the accused. Prima facie, the sum and substance of her allegations in her substantive evidence would indicate, that the main bone of contention was taking care of the child in proper manner. That the applicant had not approved of the manner in which she was looking after the child.

10 After lodging of the FIR, the couple had started residing separately. She had claimed maintenance from the applicant. It appears from her evidence that she had filed a suit demanding Rs.15 Lakh from the applicant and the suit was registered as Special Civil Suit No.662 of 1998. She has admitted that she was the sole plaintiff. That the applicant was paying Rs.1,000/- towards maintenance under section 125 of the Code of Criminal Procedure. The Special Civil Suit No.662 of 1998 was disposed of by consent decree as the parties had arrived at compromise. The applicant was directed to pay an amount of Rs.12,000/- to the complainant every month. He was also directed to bear cost of the education of their son. That the flat No.31 at Aditya Avenue, Nashik was given to the complainant – wife and the same was treated as Stridhan.

11 The learned counsel for the applicant submits that in fact, both the Courts below have not appreciated evidence in its proper perspective. That there was lack of evidence. The contents of the letter were mentioned in the examination-in-chief. The allegations are omnibus. It is also stated that since the complainant – wife was a Lawyer, she had manipulated registration of the non-cognizable cases in order to make out a good ground for filing a complaint under section 498A of the Indian Penal Code. That the prosecution has not proved the guilt of the accused beyond reasonable doubt.

12 As against this, the learned APP submits that the evidence of PW3 would indicate that soon after registration of FIR, the complainant was examined by Dr. Siddharth Shelke and he has proved the injury certificate which would show that the complainant had sustained injuries in the form of abrasion on her nose, right scapular region. Thus, injuries were simple but sufficient to indicate that the complainant was assaulted in her matrimonial house. The learned counsel for the appellant has drawn attention of this Court to the cross-examination of the Doctor in which it is stated that the certificate is issued at the instance of the complainant/patient and that there could be several reasons for sustaining the said injuries and that the said abrasion could be caused by nails also. The

learned APP has submitted that the very fact that the complainant had initially registered four non-cognizable complaints before filing a report under section 498A of the Indian Penal Code would be sufficient to indicate that she was intermittently harassed by the applicant.

13 The learned counsel for the applicant submits that in fact, it was a normal wear and tear of a married life and that there was no good ground for conviction under section 498A of the Indian Penal Code, more particularly, for want of cogent evidence.

14 It appears from the record that the complainant had little knowledge about the customs and rituals of Adivasi Community. She was more impressed with the qualification of the applicant. That, she always wanted a secured life and therefore, she had got married to the applicant. It is also apparent on the face of the record that the complainant – wife had ambition to practice Law. Despite domestic chores, she had completed her Graduation in Law. The applicant wanted her to be a housewife at least till the child is able to manage himself. The complainant had got a cultural shock soon after marriage, more particularly when she was taken to Dodipada i.e. the native place of the applicant.

15 Upon perusing the contents of the letters, it appears that when she had been to Dodipada she was informed by some of the villagers that the family of the applicant has criminal antecedents and that they had harassed and beaten their own son-in-law and therefore, it was prompted to her that she would also suffer harassment at the hands of the applicant and his family. There are specific allegations that the applicant was being tutored by his parents and relatives and at their instance, he had harassed her. The qualification of the complainant cannot be taken to be a disadvantage and she cannot be blamed for filing a report under section 498A of the Indian Penal Code since she had only taken recourse to the legal provisions.

16 It appears that a discordant note which had struck between the couple over the maintenance of the child had precipitated to such an extent, that, there was no other alternative for the complainant but to file a report under section 498A of the IPC.

17 It is true that restraining the wife from allowing her to live a respectable and honourable life would amount to cruelty. However, it appears that it was a temporary phase till the child had grown up. In any case, the applicant had permitted her to complete the course in Law after

marriage and therefore, it cannot be said that he did not want her to be an independent person.

18 The submission of the learned counsel for the applicant that there is no independent cogent evidence cannot be taken into consideration for the simple reason that all such incidents in a matrimonial dispute would take place within four walls of the house and it would not be appropriate to expect any independent evidence. What is surprising is that the prosecution has not examined the witnesses who were available i.e. Archana Salunkhe, Advocate Mr. Jaybhave, Advocate Mr. Bhide, who were witnesses to the alleged incident. At the same time, in her substantive evidence, although she has referred to Advocate Mr. Jaybhave and Dr. Gaikwad, none of them have been examined by her.

19 In view of this, it can be said that normal wear and tear of the marriage was blown out of proportion. It was more of difference of opinion, ways adopted in upbringing of the child, expectations from a highly qualified husband, from his wife, that gave the alarming call. As against this, she had received a cultural shock after reacting with his relatives, moreover, she was career oriented and at the same time, insecure, because of her own background. All these factors cannot be read in the bracket of section 498-A of the Indian Penal Code.

20 Unfortunately, the complainant was suffering from diabetes from 2002. She has expired on 21st June 2016. The applicant has not remarried since he was looking after their son. As on today, the son is working on a Managerial post in U.S.A. The complaint is of the year 1994 and the present revision application is of the year 2002. By passage of time, it would not be appropriate to send the applicant to jail. The applicant was in custody for about 10 days after registration of FIR and for some days after dismissal of the appeal.

21 Hence, in view of the observations, the Criminal Revision Application deserves to be allowed. Hence, the following order is passed :-

ORDER

- (i) The Criminal Revision Application is allowed;
- (ii) Bail bonds stand cancelled;
- (iii) Fine amount, if paid, be refunded;
- (iv) Criminal Revision Application is disposed of on above terms;
- (v) Parties to act upon an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J.)