

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

CRIMINAL APPEAL NO. 246 OF 2008

The State of Maharashtra

..Appellant

Vs.

1. Munna Ibrahim Shaikh
Age 25, Occ. Business,

2. Ibrahim Kasim Shaikh
Age 91, Occ. Retired,
Both R/o. Police Head Quarter,
Block No.5, Room No.4,
Solapur.
(Abated as per order dated 23/6/2021)

3. Salima Mahiboob Mujawar
Age 45 Occ. Household,
R/o. Adarshnagar, Plot No.14,
Solapur.

4. Riyaz Mahiboob Mujawar
Age 25 Occ. Service,
R/o. Adarshnagar, New Solapur.

5. Shakira Dastagir Shaikh
Age 52, Occ. Household,
R/o. Ghongade Vasti, Solapur.

6. Yusuf Mahiboob Shaikh
Age 46, Occ. Business,
R/o. 435, Khadakpura, Vairag,
Taluka Barshi, Solapur.

7. Rehana Papalal Shaikh
Age 41, Occ. Household,
R/o. Adarshnagar, Plot No.3,
Solapur.

8. Mehrunissa Kondaji Shaikh
Age 60, Occ. Household,
R/o. Kurban Hussain Nagar,
Solapur.

9. Nafisa Yusuf Shaikh
Age 40, Occ. Household,
R/o. 435, Khadakpura, Vairag,
Taluka Barshi, Dist- Solapur.

10. Shakira Musa Shaikh
Age 50 Occ. Household,
R/o. Ghatkopar Police Line,
Building No.15, Mumbai.

11. Musa Ibrahim Shaikh
Age 55, Occ. Service,
R/o. Ghatkopar Police Line,
Building No.15, Mumbai.
(R. Nos.10 & 11 are dismissed
vide order dated 23/6/2021)

..Respondents

Mr. S. R. Agarkar, APP for the Appellant / State.
None for the Respondents.

CORAM : C.V. BHADANG, J.
DATE : 25 NOVEMBER 2021

Judgment :

. This is an Appeal against acquittal of the Respondents from the offence punishable under Section 498A, 323 and 504 r/w. 34 of IPC.

2. I have heard learned APP. None appears for the Respondents. Perused record.

3. The record shows that the Appeal has abated against the Respondent No.2 as he has expired and the Appeal is dismissed as against Respondent Nos.10 and 11 vide order dated 23 June 2021. Thus, the Appeal only survives against the Respondent No.1 and 3 to 9.

4. The prosecution case is that the Complainant Nilophar (P.W.1) was married to the Respondent No.1 (Accused No.1). The other Respondents are the in-laws of the Complainant. The allegation is that the P.W.1 was ill-treated on account of the demand of money / valuables. At the trial, the prosecution examined Complainant (P.W.1) alongwith her father Channumiya Patel (P.W.2), brother Samir Patel (P.W.3) and her mother Rabia Patel (P.W.6). The independent witnesses who are neighbours being P.W.4 – Mahibub Shaikh and P.W.5 – Shobha Pangare have turned hostile and did not

support the prosecution case. P.W.7 – Hafiz Ismail is a Kazi who had solemnized the marriage between the Complainant and the Respondent No.1.

5. It has come on record that the marriage of the Complainant with the Respondent No.1 was her second marriage. She was earlier married to one Shahnawaz Gadkari of Ratnagiri and nothing is brought on record to show that P.W.1 had obtained divorce from her husband Shahnawaz Gadkari. The learned Magistrate has therefore held on the basis of the evidence led, that the Complainant was not the legally wedded wife of the Respondent No.1 and therefore the provisions of Section 498A of IPC are not attracted. It is in this view of the matter that the learned Magistrate by the impugned judgment and order dated 13 July 2005 in Regular Crime Case No.294/2002 has acquitted the Respondents.

5. With the assistance of the learned APP, I have gone through the evidence of the prosecution witnesses and the impugned judgment. It is an admitted position that the Complainant was married to one Shahnawaz Gadkari of Ratnagiri and the prosecution has not established that the said marriage was legally dissolved so that the marriage of the Complainant with the Respondent No.1 would be legal and valid. The view taken by the learned Magistrate on the basis of the evidence led, is a plausible view. It is now well

settled that this Court can justifiably interfere in the order of acquittal, if the view taken by the Trial Court is found to be perverse or an impossible view which is not a case in this Appeal (See the decision of the Supreme Court in *Chandrappa and Ors. Vs. State of Karnataka* ¹) The Appeal is without any merit and is accordingly dismissed.

C.V. BHADANG, J.