

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

CRIMINAL APPEAL NO. 275 OF 2015

Hemraj Pralhad Nirmal	...Appellant
Versus	
State Of Maharashtra	...Respondent

**WITH
CRIMINAL APPEAL NO. 334 OF 2015**

Kanchan Hemraj Nirmal	...Appellant
Versus	
Hemraj Pralhad Nirmal And Ors.	...Respondents

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Ms. Keral Mehta i/by Mr. Niranjan S. Mundargi, Advocate for the Appellant in Criminal Appeal No.275 of 2015.

Mr. Prashant D. Patil, Advocate for the Appellant in Criminal Appeal No.334 of 2015.

Mr. S. V. Gavand, APP for the Respondent – State.

CORAM	:	PRAKASH D. NAIK, J.
DATE	:	13th APRIL, 2022.

PER COURT:

1. Heard both sides.
2. Criminal Appeal No.275 of 2015 is preferred by Hemraj Pralhad Nirmal challenging the judgment and order dated 21st January, 2015 passed by the learned Additional Sessions Judge, Raigad, Alibag in Special (Atro) Case No.7 of 2012 whereby he has been convicted for offence under Section 498-A of Indian Penal

Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/-. He has been acquitted for the offence under Section 3(1)(10) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”). The first informant in this proceeding was the wife of the appellant. At the relevant point of time, the applicant was the Police Constable.

3. The appellant in Criminal Appeal No.334 of 2015 is the first informant. She is the wife of Hemraj Pralhad Nirmal. The first informant/complainant has preferred the said appeal challenging the acquittal of accused no.1 - Hemraj Pralhad Nirmal under the provisions of SC/ST Act and acquittal of accused nos. 2 & 3 for offence under Section 498-A of IPC as well as under SC/ST (Prevention of Atrocities) Act.

4. Both the appeals were admitted by this Court and pending for final disposal. The substantive sentence of imprisonment imposed against the accused no.1 - Hemraj Pralhad Nirmal (Appellant in Criminal Appeal No.275 of 2015) has been suspended by this Court and bail was granted to him.

5. During the pendency of both the appeals, the parties had arrived at amicable settlement and pursuant to that marriage

between the appellant - Hemraj Pralhad Nirmal and the appellant-Kanchan Hemraj Nirmal has been dissolved. Both the sides had executed pursis of settlement on 22nd January, 2020 and the same were tendered in the proceedings before the Civil Judge Senior Division, Panvel. The original copy of pursis has been produced. The parties are permitted to place on record the photo copy of the settlement pursis. The photo copy of the pursis is taken on record and marked as 'X' for identification.

6. The settlement pursis indicate that there is settlement between both the sides. The terms of settlement are reflected in the pursis. One of the term of settlement is that the proceedings initiated by both the parties are agreed to be withdrawn.

7. Learned Advocate for the appellant in Criminal Appeal No.275 of 2015 and respondent nos.2 & 3 in Criminal Appeal No.334 of 2015 submits that there is settlement between both the sides. The proceedings were arising out of matrimonial dispute between the parties. The parties had agreed to dissolve the marriage. The appellant - Hemraj Pralhad Nirmal was working as Police Constable at the relevant time. Departmental inquiry was conducted against him. He was exonerated. However, on account of the judgment of conviction his services were terminated. The

said appellant then applied for the post of P.S.I. through M.P.S.C. and he was selected. However, on account of conviction, the appointment of the appellant for the said post is not yet recommended. In these circumstances, the judgment of conviction of the appellant - Hemraj Pralhad Nirmal be set aside and he may be acquitted.

8. Learned Advocate Mr. Prashant Patil representing the appellant in Criminal Appeal No.334 of 2015 on instructions confirmed the fact that there is settlement between both the sides and the settlement pursis referred to herein above were executed between the parties. Criminal Appeal No.334 of 2015 is preferred by the wife of Hemraj Pralhad Nirmal and that she has no objection for setting aside the judgment of conviction and acquittal of the appellant - Hemraj Pralhad Nirmal. It is further submitted that she does not want to pursue Criminal Appeal No.334 of 2015 challenging the acquittal of the respondent no.1 for offences under the SC/ST (Prevention of Atrocities) Act and acquittal of respondent nos. 2 & 3 for offences under Section 498-A as well as under the provisions of SC/ST (Prevention of Atrocities) Act. It is submitted that the appellant therein may be permitted to withdraw the said appeal.

9. Thus, it is not disputed that the proceedings were initiated on account of matrimonial differences. The appellants Hemraj Pralhad Nirmal and Kanchan Hemraj Nirmal were husband and wife at the relevant point of time. Their marriage has been dissolved on execution of settlement pursis.

10. Learned counsel for the appellant has relied upon the decision in the case of Rajendra Bhagat. V/s. State of Jharkhand in Criminal Appeal No.2 of 2022 arising out of SLP (CRL.) 6840 of 2021 dated 3rd January, 2022. The factual matrix of the said decision would indicate that the proceedings were initiated under Section 498-A of IPC. The accused therein was convicted for the said offence. The accused/appellant had joined Indian Army. The appeal preferred by the accused before the Sessions Court was dismissed and thereafter he has invoked the revisional jurisdiction of the High Court. The parties had arrived at the settlement and joint request was made for setting aside the judgment and order of conviction. The High Court had modified the order of the trial Court and the Appellate Court by maintaining the conviction and releasing the accused on the basis of the period of custody already undergone by him. The Hon'ble Apex Court has observed that, on examining the matter in its totality it appears that the High Court

while disposing of the revision petition with the application moved by the parties, did not pause to consider that maintaining conviction of the appellant therein for the offence under Section 498-A of IPC would not be securing the ends of justice and with such conviction being maintained and the appellant losing his job, the family would again lend in financial distress which may ultimately operate adverse to the harmony and happy conjugal life of the parties. The Hon'ble Apex Court also taken note of the object of Section 498-A of IPC and thus observed that expected approach of the High Court in the event of *bonafide* settlement of disputes is considered by the Hon'ble Apex Court in the case of B.S.Joshi and Others V/s. Haryana and Another (2003) 4 SCC 675 wherein the Court has underscored the duty of the Court to encourage the genuine settlement of matrimonial disputes. Reference is also made to another decision in the case of Bitan Sengupta V/s. State of West Bengal and Another (2018) 18 SCC 366. Taking note of the terms of settlement, it was observed that the High Court should have accepted the settlement and quashed all the proceedings with annulment of the orders against the appellant therein. With these observations, the Hon'ble Apex Court quashed and set aside the entire judgment of conviction.

11. Applying the ratio of the decisions and the facts of this case, it can be seen that the proceedings were initiated by the wife of the appellant - Hemraj Pralhad Nirmal. Both the sides have settled the dispute. It is submitted by them that the conviction be set aside and the appellant/accused be acquitted. The complainant has also stated that the appeal preferred by her as referred to herein above may be permitted to be withdrawn. It was also submitted that conviction of appellant/accused would be adverse to future employment or reinstatement in past employment.

12. In view of the aforesaid circumstances, I pass the following order :-

ORDER

- i.** Criminal Appeal No.275 of 2015 is allowed and disposed off;
- ii.** The judgment and order dated 21st January, 2015 passed by learned Additional Sessions Judge, Raigad, Alibag in Special (Atro) Case No. 7 of 2012, convicting the appellant - Hemraj Pralhad Nirmal for the offence under Section 498-A of IPC and sentencing him to suffer imprisonment and pay fine is set aside and he is acquitted.
- iii.** Criminal Appeal No.334 of 2015 is allowed to be withdrawn and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)