

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL WRIT PETITION NO. 159 OF 2022

1. Mr. Sanjay s/o Wamanrao Meshram
Aged about 45 years, Occ: Service
2. Sau. Ratnamala w/o Wamanrao
Meshram
Aged about 70 years, Occ: Household
3. Sau. Vandana W/o Sanjay Meshram
Aged about 40 years, Occ: Teacher

All petitioners nos.1 to 3 are R/o Samta
Nagar, Sawangi (Meghe), Wardha

... PETITIONERS

---VERSUS---

State of Maharashtra,
Through Police Station Officer,
Through Police Station, Wardha.

...RESPONDENT

Shri J.R. Kidilay, Advocate for petitioners.

Shri S.M. Ghodeswar, Additional Public Prosecutor for respondent.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 4th APRIL, 2022.

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.

3. By this writ petition under Articles 226 and 227 of the Constitution of India the petitioners have filed joint writ petition challenging the registration of First Information Report (FIR) against the petitioner nos.1 and 2 for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code (IPC).

4. The FIR came to be registered against the petitioner nos.1 and 2 with the acquisition that the petitioner nos.1 and 2 physically and mentally harassed the petitioner no.3.

5. The investigating agency after filing of charge-sheet, the petitioner nos.1 and 2 were tried for the offence punishable under Section 498A and 34 of the IPC. The learned Judicial Magistrate First Class, Court No.1, Wardha by its judgment and order dated 03.02.2016 convicted the petitioner nos.1 and 2 for the offence punishable under Section 498A read with Section 34 of the IPC.

6. The petitioner nos.1 and 2 have filed Criminal Appeal No.21 of 2016 before the learned District and Sessions Judge, Wardha.

7. During the pendency of the appeal, the petitioners have amicably resolved their dispute and have filed present writ

petition challenging the registration of FIR along with conviction recorded by the learned Judicial Magistrate First Class, Court No.1, Wardha.

8. We have heard the learned counsel for the petitioners. He invited our attention to the judgment of this Court in the case of Sau. Maya Sanjay Khandare and another Vs. State of Maharashtra reported in 2021 ALL MR (CRI) 660 (F.B.) to paragraph 33, wherein this Court has permitted for quashing of FIR and criminal proceedings post conviction if the case falls in the rarest in rare case as stated in the said judgment. The Full Bench of this Court has clarified on rarest of rare cases by stating that the cases which arise out of the matrimonial dispute can be considered as the rarest of rare case.

9. In the light of ratio laid down by the Full Bench, we have carefully scrutinized the allegations made in the FIR and the judgment of conviction. The judgment of conviction proceeds only on the basis of matrimonial dispute. It needs to be noted that there is no allegation or conviction in relation to any other offence than offence under Section 498A. Therefore, we have satisfied that the dispute arose out of matrimonial dispute only. We clarify

that we are not adjudicating for quashing the conviction which may have been recorded in any other offences than offence punishable under Section 498A.

10. Since the petitioners have made out a case under the rarest of rare case as observed Full Bench of this Court, we find that there is no impediment in quashing the conviction and the criminal proceedings against the petitioner nos.1 and 2. We therefore pass the following order:

ORDER

- i. The judgment of conviction passed in Regular Criminal Case No.41 of 2014 by learned Judicial Magistrate First Class, Court No.1, Wardha dated 03.02.2016 is quashed and set aside.
- ii. The petitioner nos.1 and 2 are acquitted for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code.

Rule is made absolute in above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

Wagh