

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL REVISION APPLICATION (REVN) NO.62 OF 2022
(Hansraj Mahadeorao Pakhale .Vs. State of Maharashtra)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms A. Sharma, Advocate for Applicant.
Shri A. R. Chutke, APP for Respondent/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 29th JUNE, 2022.

. Heard Ms A Sharma, learned Counsel for the Applicant and Shri A. R. Chutke, learned APP for the Respondent/State.

2. The Applicant/Accused No.1 has been convicted by the learned Judicial Magistrate First Class, Amravati by the judgment dated 12.12.2018 for the offence punishable under Section 498-A of the Indian Penal Code (IPC) and has been sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.20,000/- (Twenty Thousand Only), and in default of payment, to suffer simple imprisonment for four months. The other Accused Nos.2 and 3 were acquitted of the said offence. The Appellate Court by the judgment dated 02.03.2022 has been pleased to maintain the conviction, however, reduced the sentence to rigorous imprisonment for five months.

3. Ms Sharma, learned Counsel for Applicant submits, that the material on record, does not indicate

the satisfaction of requirements of Section 498-A of the IPC, and therefore, the Courts below have erred in convicting the Applicant for the said offence. She invites my attention to the evidence of PW-1 the victim and specifically the cross-examination, in which, it has been admitted by her, that the allegations that there were demands for Rs.5,000/- and Rs.10,000/- earlier in point of time, were not in her statement, and therefore, amounted to material omissions. Insofar as the claim that Rs.50,000/- was given by way of a cheque by the PW-3 the mother of the complainant, it is submitted that the same were given for the purpose of construction of the toilet and not on account of any demand under Section 498-A of the IPC. Even otherwise, at that point of time, the relations were not strained, and therefore, the question, that Section 498-A of the IPC, has been attracted, did not arise. It is further submitted, that there is material contradiction between the evidence of PW-1 Vaishali and that of the PW-3 Kantabai insofar as the incident dated 06.12.2007 is concerned, the benefit of which, ought to have been given to the Applicant. She further invites my attention to the judgment of the Appellate Court, which has discarded the evidence of PW-2 Bhikaji and PW-4 Pralhad in respect of the allegation of harassment and a communication Exh-51, which is claimed to have been written by the PW-1 to PW-4 complaining of the harassment by the Applicant. She therefore submits, that this is a case for acquittal and the impugned judgment cannot be sustained.

4. Shri Chutke, learned Additional Public Prosecutor supports, the impugned judgment and submits, that the demand of Rs.50,000/- has been proved by the evidence of PW-1 and PW-3 as well as by Exh-41 and Exh-42, and therefore, the conviction of the Applicant is correct and proper. He further submits, that the Appellate Court ought not to have discarded the evidence of PW-2 and PW-4 as it was worthy of credence. He therefore submits, that the Appeal needs to be rejected.

5. A perusal of the evidence of PW-1 indicates, that insofar as the claim made by her regarding demands of Rs.5,000/- and Rs.10,000/-, there is material omission inasmuch as she has admitted in her cross-examination that though, such a statement was made by her to the Police, the aforesaid amounts do not figure in the statement. It has come in her cross-examination that though in her Police report she had stated that the Applicant was torturing her mentally and physically and she had informed the same to her mother on telephone, it was not included in her statement, for which, she could not assign any reason. She has further admitted in her cross-examination, that when the Applicant came to Nagpur, he was continuously pressurizing the PW-1 to make a demand to her mother for giving money and so also when after the delivery, her mother had come with her to Sanjay Gandhi Nagar to reach to the residence of the Applicant, he did not take her, was missing from her complaint. This also constitutes a material omission. What is also necessary to note is, that insofar as the last

omission, as indicated above, that is relatable to the incident dated 06.12.2008, and therefore, this material omission, is clearly a telling one.

6. The evidence of PW-3 Kantabai insofar as the incident dated 06.12.2007 is concerned, does not indicate any demand whatsoever by the Applicant, and therefore, it cannot be related to the provisions of Section 498-A of the IPC. Insofar as the further cross-examination of PW-3 is concerned, there are material omissions, brought on record, regarding the alleged incidences of harassment, which she claims in her examination-in-chief regarding insistence by the Applicant to abort and assault on the stomach of the PW-1. Insofar as the demand of Rs.50,000/- is concerned, it is dated 06.11.2006, at which point of time, it was nobody's case, that it was being demanded on account of dowry. That apart, Exh-41, which is a copy of the said cheque, is admittedly a photocopy and no attempt has been made to examine material witnesses from the Bank along with the original, in order to prove the same according to law. Exh-42 is the photocopy of the certificate dated 07.01.2009, issued by the Union Bank of India, regarding the transfer of Rs.50,000/- by cheque, however, the same is also a photocopy and in respect of Exh-42 also no attempt has been made to procure the original or examine the material witness in order to satisfy the requirement of the evidence in this regard.

7. The evidence of PW-2 has rightly been discarded by the learned Appellate Court for the reason that even PW-1, does not say in her evidence, that any point of time, she had been to the residence of PW-2 and narrated any incidences as to his wife or that the PW-2 was present at any such time, considering which, no reliance can be placed thereupon. PW-4 Pralhad claims to be the recipient of a communication by the PW-1, in which, it is indicated that she was facing harassment at the hands of the Applicant. A perusal of Exh-51 indicates that it is neither signed by PW-1 nor bears any date. Though the postal stamp thereupon indicates a date 30.01.2008, however, the contents of the letter indicate that the PW-4 had been to the residence of the Applicant and has scolded him, whereupon the behaviour of the Applicant had changed for the better, such a statement, however is not contained in the evidence of PW-4, which makes Exh-51 suspect.

8. It is, thus, apparent, that the conviction of the Applicant, is based upon the testimony of PW-1 and PW-3, analysis of which, as indicated above, discloses material omissions and contradictions, in view of which, the conviction ought not to have been based upon such evidence.

9. It has further come on record that though PW-1 and PW-3 state, that on 06.12.2008 as the Applicant demanded money and refused to take PW-1 inside the house, as a result of which, immediately on the same

day, the complaint came to be lodged, however, there is no such complaint dated 06.12.2008 on record. The complaint is dated 30.01.2009, which is after delay of nearly 55 days and there is nothing in the evidence of PW-1 to explain such delay, in view of which, what has been held in ***State of Andhra Pradesh ..vrs.. M. Madhusudhan Rao, 2008 (5) SCC 582***, that the delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought and a delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity, and therefore, it is essential that the delay in lodging the report has to be satisfactorily explained, is clearly applicable, as there is no explanation for the said delay, as indicated above.

10. For the aforesaid reasons, I am unable to concur with the findings rendered by the learned JMFC as well as the Appellate Court regarding the Applicant being guilty of an offence under Section 498-A of the IPC as the evidence on record does not indicate the ingredients necessary for establishing the offence, having been established as a result of which, the judgment of the learned Magistrate dated 12.12.2018 and that of learned Appellate Court dated 02.03.2022 are hereby quashed and set aside and the Applicant is hereby acquitted of the offence under Section 498-A of the IPC.

11. The criminal revision application is allowed and disposed of accordingly.

JUDGE

TAMBE.