

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.63 OF 2020

1. Somnath s/o Siddheshwar Swami,
Age 31 years, Occu. Agri.,
R/o Malegaon, Tq. Ardhapur,
District Nanded.
 2. Siddheshwar Nagnath Swami,
Age 63 years, Occu. Agri.,
R/o Malegaon, Tq. Ardhapur,
District Nanded.
 3. Anjanabai w/o Siddheshwar Swami,
Age : 59 years, Occu. Houshold,
R/o Malegaon, Tq. Ardhapur,
District Nanded.
 4. Raghunath s/o Siddheshwar Swami,
Age : 27 years, Occu. Coach,
R/o Malegaon, Tq. Ardhapur,
District Nanded.
 5. Kaushalya @ Anita Anil Swami,
Age : 35 years, Occu. Houshold,
R/o Kasarkheda, Taluka Nanded.
 6. Dwarka Sadanand Swami,
Age : 32 years, Occu. Houshold,
R/o Juna Kautha, Nanded,
Tq. and District Nanded.
 7. Revannath s/o Siddheshwar Swami,
Age : 29 years, Occu. Service,
R/o Malegaon, Tq. Ardhapur,
District Nanded.
- ... Applicants.**

Versus

1. The State of Maharashtra
Through Guntur Police Station,
Tq. Naigaon, District Nanded.

2. Gangasagar @ Dhanashri Somnath Swami,
Age : 30 years, Occu. Agri.,
R/o Krishnur, Tq. Naigaon,
District Nanded. ... Respondents.

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Advocate for Applicants : Mr. Gadhe Ganesh A.
APP for Respondent-State : Mr. K. S. Patil
Advocate for Respondent No.2 : Mr. Muneshwar G. K.

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CORAM : S. G. MEHARE, J.
DATE : 06.04.2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The applicants have impugned the order below Exh.4 of the learned Judicial Magistrate First Class, Naigaon, in R.C.C. No.54 of 2019. By application Exh.4, the applicants have claimed discharge on the ground that the Court cannot take cognizance as the complaint was filed after the period of limitation to take cognizance under Section 468(2)(c) of the Cr.P.C. and there was a divorce between the wife and the husband and accused Nos.2 to 7 were not relatives of her husband.

3. Learned counsel for the petitioners has vehemently argued that *prima facie*, the complaint is barred by limitation. Hence, the Court cannot take cognizance. As far as the divorce is concerned, he has argued that the relationship between husband and wife ceased long before lodging the report. Therefore, the applicants were liable to be discharged. For accused Nos.2 to 7, he has argued that they were not relatives of the husband of the complainant. Therefore, no offence is made out against them.

4. Per contra, the learned counsel for respondent No.2 has argued that there was no divorce as such. He further argued that the offence under Section 498-A is continuous; therefore, it was not barred by limitation. He also argued that the divorce deed was not the part of the record. It was not binding upon the complainant/wife. The learned Judicial Magistrate First Class has given valid reasons and correctly rejected the application.

5. The question is whether the offence punishable under Section 498-A is continuous that gives rise to a fresh cause of action.

6. Learned counsel for the applicants has relied on the following cases :

- (i) State of Rajasthan Vs. Sanjay Kumar and others ; (1998) 5 Supreme Court Cases 82.
- (ii) Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and others; Criminal Appeal No.1578 of 2008 (Arising out of SLP (Crl.) No.1339 of 2007)

7. Learned counsel for the respondent has relied on the following cases.

- (i) State by Karnataka Lokayukta Police Station, Bengaluru Vs. M. R. Hiremath; Criminal Appeal No.819 of 2019 (Arising out of SLP (Crl) No.9009 of 2017), dated 01.05.2019 by the Supreme Court of India.
- (ii) Ratilal Bhanji Mithani Vs. The State of Maharashtra and others; 1979 SCC (2) 179.
- (iii) Pramod Kumar Vs. State of U.P and another, Matters under article 227 No.5127 of 2019, by Allahabad High Court, dated 09.07.2019.
- (iv) Rupali Devi Vs. State of Uttar Pradesh and others, Supreme Court of India in Criminal Appeal No.71 of 2012 with connected matters, dated 09.04.2019.

8. By catena of judgments, the law is well settled that the offence under Section 498-A is continuous. Whether the divorce is valid or binding to the parties is a matter of evidence. Same way, whether respondents Nos.2 to 7, in the absence of prima facie evidence, were relatives of the husband is also a matter of investigation.

9. Learned counsel for the respondent states that the trial has commenced, and the case is part heard.

10. An opportunity shall be given to the prosecution to bring the material from the cross-examination or by producing independent evidence to prove that the offences for which the FIR has been registered are not time-barred. Whether the complaint is time-barred is a mixed question of law and facts. On the date of the alleged incident or the date of the lodging of the report, the evidence before the Court to prove that the relationship as husband and wife was unavailable. The right of the accused to rebut the prosecution evidence has not been closed; it is still open.

11. The applicants did not claim discharge under Section 227 of Cr.P.C. Bare application was filed to discharge as the complaint was time-barred. In the absence of an enquiry on the

continuous cause of action, it would be inappropriate to receive the contents of the application without its proof.

12. The impugned order is error-free, legal and proper. There are no grounds to interfere with the impugned order, and it does not warrant interference. Hence, the following order.

ORDER

- (i) The Criminal Revision Application stands dismissed.
- (ii) No order as to costs.
- (iii) Rule stand discharged.

(S. G. MEHARE, J.)

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vmk/-