

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.123 OF 2019

The State of Maharashtra,
Through Parner Police Station,
Tq. & Dist. Ahmednagar,
Complainant - Sau. Priya Baban Zambare,
R/o. Babhurdi, Tq. Parner, Dist. Ahmednagar.

... Applicant
(Orig. Informant)

Versus

1. Baban Chandrabhan Zambare,
Age : 24 years,
2. Ahilyabai Chandrabhan Zambare,
Age : 44 years,
3. Chandrabhan Sakhara Zambare,
Age : 48 years,
4. Dnyaneshwar Chandrabhan Zambare,
Age : 22 years,
5. Manisha Dilip Shelke,
Age : 26 years,
6. Dilip Pandurang Shelke,
Age : 31 years,

All R/o. Wadegavan, Tq. Parner,
Dist. Ahmednagar.

... Respondents.
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant - State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 25th JULY, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Leave to file appeal under section 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.), is on behalf of State, on getting dissatisfied by the judgment and order of acquittal dated 02.02.2019 passed by learned Assistant Sessions Judge, Ahmednagar in Sessions Case No. 197 of 2017, which was tried for commission of offence under sections 498-A, 307, 323, 504, 506 read with section 34 of Indian Penal Code (IPC).

2. According to learned APP, PW1 Priya was married to respondent no.1 on 09.05.2004. Till 2 to 3 months of marriage everything was smooth, however thereafter parents-in-law and brother-in-law started demanding Rs.50,000/- for the purchase of pickup van. That, PW1 Priya promptly informed about it to her parents. Understanding was given and even assurance was given that demand would be made as and when possible. It is submitted that, she was made to do excess work. It submitted that, according to PW1 Priya-informant, in December 2005, mother-in-law forced her to consume milk which was laced with poison. That, she was required to be admitted and treated. It is submitted that, on 22.04.2006 and 23.04.2006, husband beat her and took custody of the child forcibly and they had driven her out of the house.

Therefore, with such allegations crime was registered and investigated and on gathering sufficient evidence, husband and in-laws were charge-sheeted. It is pointed out that apart from testimony of victim PW1 Priya, father was also examined. Treating doctors at hospitals, Ruby Hall and Primary Health Center (PHC) are also examined. Therefore, it is submitted that, there was oral evidence of victim coupled with medical evidence. However, it is pointed out that, learned trial Judge has failed to consider and appreciate such evidence and has acquitted accused from all charges. It is further submitted that, going by the evidence, prosecution has a strong case in appeal and therefore, he prays for leave to file appeal.

3. In the light of above submissions, we have examined the evidence adduced before the learned trial court and we have also carefully gone through the judgment which is sought to be challenged.

4. It seems that, PW1 Priya, who set law into motion with Supa police station, is wife of respondent no.1 Baban and rest of the respondents are her in-laws. It seems that marriage had taken place on 09.05.2004. Informant PW1 Priya deposed about gift and articles given in the marriage. According to her, her maternal

house is at 20-25 km. away from her matrimonial house. It is seen from her evidence that, after 2 to 3 months of the marriage, she has levelled allegations of demand at the instance of parents-in-law and brother-in-law. Husband is apparently not named herein. According to her, she had written letters to her parents regarding the demand. It is also worth noting that, she is barely 20 km. away from her maternal house, however still she seems to be claiming about writing letters to her parents. Be it so. She has leveled allegations against mother-in-law for forcing her to drink milk, which accordingly was mixed with something, as a result of which she fell ill and she was treated. Then, she has leveled allegations about beating at the hands of husband, but in April 2006. She claims that, she was driven out of the house.

5. We found that, there is insufficient or no material about cruelty as contemplated under section 498-A of IPC. Regarding incident of poisoning also seems to have taken place on 15.12.2005, whereas report regarding the same has been lodged on 24.04.2006. Apart from herself and her father there is no other witness. She has admitted that sister-in-law is already married. As stated above, there are no allegations of cruelty attributed to husband and vague allegations are leveled against in-laws. Nature of ill-treatment is also not defined except stating about she made to

do work excessively. Therefore, in our opinion, with such evidence on record, and as required ingredients for attracting offences for which crime was registered, are not available, guilt cannot be fastened.

6. In the light of such evidence, we too are convinced that prosecution has failed to establish the case firmly, cogently and beyond reasonable doubt. The answers given by both daughter and father are rendering the implication in the background of annoyance and strained relations. Therefore, learned trial Judge has correctly appreciated the evidence and has rejected the prosecution case. Resultantly, no fault can be found in the judgment so as to permit State to prefer appeal. With such evidence on record, we are of the opinion that no fruitful purpose would be served even if leave is granted.

7. The application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)