

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

CRIMINAL WRIT PETITION NO.1879 OF 2019

MANDAR S/O. MANIK CHOUDHARY
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Petitioners : Mr. N. K. Tungar
APP for Respondents: Mr. V. S. Badakh

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CORAM : R.M. JOSHI, J

DATE : JULY 12, 2023

PER COURT :

1. This Petition takes exception to the order passed by learned JMFC on 26.04.2018 in R.C.C. No. 546/2017 for issuance of process against Petitioner for the offence punishable under Section 498-A IPC. Feeling aggrieved, Petitioner and co-accused preferred Revision Application being Criminal Revision No. 98/2018 which came to be partly allowed and order of issuance of process against co-accused was set aside and said accused were discharged whereas proceeding against Petitioner was allowed to be continued.

2. Learned Counsel for the Petitioner states that having regard to the age of Petitioner, there could not have been valid marriage between Petitioner and

Respondent. To support his contention, he submits that there is leaving certificate of boy which indicates that the Petitioner could not have perform any valid marriage. He relied on the judgment in case of Reema Aggarwal Vs. Anupam and Others, 2003 DGLS(SC) 20, to buttress submission that unless there is valid marriage offence under Section 498-A is not tenable.

3. It is the defence of the Petitioner that there is no valid marriage between Petitioner and Respondent, and therefore, the provisions of Section 498-A of IPC are not applicable to the present case. Such defence of the petitioner can be considered during trial and it is for him to prove the same at least on probability. At this stage, it is not open for this Court to record any finding as to whether Petitioner or Respondent, as the case may be, whether of marriageable age or not. With regard to judgment in case of Reema Aggarwal (supra), it was a case that during the subsistence of first marriage, second marriage was performed, hence, it was held that it is not valid marriage to attract provisions of Section 498-A of IPC. Facts of present case totally defers from the said case and as such,

this judgment has no application to instant case.

4. In view of above, this Court is of view that learned trial Court as well as learned Sessions Court committed no error in not discharging the present Petitioner. Hence, Petition stands dismissed.

(R.M. JOSHI, J.)

Malani