

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2032 OF 2023**

Basuraj Hosmani and Ors. .. Petitioners

V/s.

State of Maharashtra & Anr. .. Respondents

Mr. Laxman K. Kalel for Petitioners

Mrs. G. P. Mulekar, APP for Respondent No.1 - State

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 26th JUNE 2023.

PC. :

1. Heard learned Advocate for the Petitioners.

2. Perusal of the First Information Report clearly indicates that, strong *prima facie* case has been made out against all the Petitioners not only under Sections 498-A and 406 but also under Sections 323, 504, 506 read with 34 of I.P.C. In view thereof, we are not inclined to quash the F.I.R.

3. Learned Advocate for Petitioners contended that, Section 498-A is not applicable to the present crime as there is no registration of marriage. We are unable to accept the said contention for the plain and simple reason that, during the course of investigation, investigating agency has seized the Declaration of Marriage duly affirmed by Petitioner No.1 and Respondent No.2

before a Notary Public on 06.09.2013. In furtherance of the said declaration, Respondent No.2 has cohabited as his wife with the Petitioner No.1 at her matrimonial house i.e. residence of Petitioner No.1. It is the categorical statement of Respondent No.2 that, out of the said wedlock she has given birth to three daughters.

4. Learned Advocate for Petitioners further submitted that, Petitioner No.1 and Respondent No.2 were in 'live-in relationship' and therefore Section 498-A of the I.P.C. is not applicable. It appears to us that, it is the defence of the Petitioners that, the relations between Petitioner No.1 and Respondent No.2 are of 'live-in relationship', which cannot be appreciated at this stage. It is the settled position of law that, defence of the accused cannot be adjudicated in a Petition under Article 226 of the Constitution of India.

5. Petition being de hors of merits is accordingly dismissed in *limine*.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)