

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3610 OF 2019

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Divya Raju Rathod & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Heramb Kadam a/w Samiksha Mane, for the Petitioners.

Mr. S. V. Gavand, APP for the Respondent/State.

Mr. Kishor Malpathak, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE : 5th SEPTEMBER, 2023

PC.

1. The prayer is for quashing of FIR being Crime No.129 of 2019 registered on 28th May, 2019 for an offence punishable under Sections 498A, 406 r/w 34 of IPC.

2. The genesis of the offence is, based on the marriage of respondent No.2 with accused Atish, who is said to have illicit relation with petitioner No.1. The petitioner Nos.2 to 4 are the relatives of the petitioner No.1 and as such, are impleaded as accused persons. The petitioners are impleaded having regard to the common intentions they had in the matter of commission of offence punishable under Sections 498A and 406 of the IPC.

3. The fact remains that the offence under Section 498A of the IPC can be invoked only against the blood relations. The parties out of the blood relations cannot be made accused and liable for an offence

punishable under Section 498A of the IPC. The status of the petitioner No.1 is that of concubine. That being so, the offence under Section 498A of the IPC ought not to have been invoked against the petitioner No.1. The issue is squarely covered by the judgment of Apex Court in the matter of *U. Suvetha Vs. State by Inspector of Police & Anr.* reported in *(2009) 6 SCC 757*. Apart from above, the fact remains that the other petitioners i.e. petitioner Nos.2 to 4 are impleaded on the basis of common intention. The offence under Section 34 of the IPC cannot be termed as an independent offence. Once it is held that the petitioners cannot be made themselves liable for an offence under Section 498A of the IPC, the offence under Section 34 of the IPC cannot be inferred against them.

4. As far as the offence punishable under Section 406 of the IPC is concerned, perusal of the FIR depicts that such allegations are concentrated against the blood relations i.e. husband and sister-in-law. If the allegations are tested in the touchstone of requirement of Section 405 of the IPC, which defines criminal breach of trust, it cannot be inferred that the said offence can be said to be satisfied against the petitioners. The allegations of criminal breach of trust are solely against the blood relations and not against the petitioners and FIR to that extent is not sustainable.

5. That being so, the petition stands allowed in terms of prayer clause (a).

[RAJESH S. PATIL, J.]

[NITIN W. SAMBRE, J.]