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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3452 OF 2015

Sonal Chandrakant Bhor

.... Petitioner.

V/s

The State of Maharashtra and Anr.

.... Respondents.

Mr. Avinash B. Avhad a/w Mahesh Rawool a/w Sahil Ghule for the
Petitioner.

Mr. Ajay Patil, APP for the Respondent/State.

Mr. Vignesh Ashokan i/b Viresh Purwant for Respondent No.2.

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

DATED : AUGUST 21, 2023

P.C.: (Per Nitin W. Sambre, J.)

1] Heard.

2] Prayer is for quashing of FIR in Crime No.345 of 2015
registered on 11.07.2015 with Kothrud Police Station, Pune

under Sections 406, 498-A, 497, 323, 504, 406 read with Section 34 of the Indian Penal Code.

3] Genesis of the offence is, Petitioner's cousin sister Dr. Ketki got married with Mr. Abhijeet Gawade who was also a technocrat like the Petitioner. Respondent No.2-complainant in the complaint dated 11.07.2015 alleged that after their marriage on 24.12.2010, Respondent No.2 was blessed with an issue.

4] As the Petitioner and deceased Abhijeet were working in the same field, intimacy was developed which has resulted into further developing illicit relations. Based on the aforesaid, complaint came to be lodged, resulting into registration of offence.

5] Submissions of Counsel for the Petitioner are, the offence alleged against the Petitioner is the one punishable under Sections 498-A, 497, 406, 323, 504, 506 read with

Section 34 of the Indian Penal Code. According to him, there are no allegations of criminal breach of trust against the Petitioner, as the marriage *inter se* between the deceased Abhijeet and Respondent No.2 has nothing to do with the present Petitioner. It is further claimed that if language of Section 498-A is appreciated, Petitioner not being relative of deceased Abhijeet, husband of Respondent No.2, provisions thereof cannot be attracted or invoked against the Petitioner. Further contentions are, necessary ingredients of offence punishable under Sections 323, 504, 506 read with Section 34 of IPC cannot be inferred against the Petitioner for want of necessary allegations by Respondent No.2-complainant against the Petitioner.

6] Our attention is also invited to the fact that husband of Respondent No.2 with whom Petitioner is alleged to have developed intimacy has also expired. In this background, it is claimed that even if prosecution story against the Petitioner is accepted as it is, it cannot be said that offence is made out or

can be inferred against the Petitioner. Learned Counsel appearing for Respondent No.2 informs that he had tried to contact Respondent No.2 but was unable to establish contact. For want of whereabouts of Respondent No.2, he submits that Court may pass appropriate orders in the matter.

7] Mr. Patil, learned APP would submit that provisions of Section 498-A are invoked having regard to the fact that Petitioner herein is related to the complainant Dr. Ketki. According to him, complainant in categorical terms has stated about there being illicit relations between the Petitioner and her deceased husband Abhijeet. As such, offence under Section 498-A was alleged against the Petitioner. He would further urge that Court may pass appropriate orders in the matter.

8] We have appreciated rival submissions.

9] We have also carefully gone through the contents of the

FIR.

10] The relationship of the Petitioner with Respondent No.2-complainant, as that of cousin sister, is not a disputed question of fact. It can be inferred from record that the Petitioner and deceased Abhijeet, both were technocrats and were working in the same field (Information and Technology). Out of aforesaid common interest in working area, it is claimed by the Petitioner that Respondent No.2-complainant misunderstood relationship between the Petitioner and deceased Abhijeet.

11] Even if prosecution case, as has been stated in the FIR, is accepted to be correct at its face value, necessary ingredients of Section 498-A of the IPC if are to be appreciated, said provision can be invoked only against the husband and his relatives. Admittedly, Petitioner is relative of Respondent No.2-complainant i.e. wife of deceased Abhijeet. In such an eventuality, it cannot be said that for offence

punishable under Section 498-A of the IPC, the Petitioner can be held responsible, though she is not relative of deceased Abhijeet, husband of Respondent No.2.

12] As far as offence under Section 406 of the IPC is concerned, there are no specific allegations against the Petitioner qua the offence alleged under Section 406 viz criminal breach of trust. Fact remains that, offence under Section 498-A once can be said to be not inferred against the Petitioner, there is no iota of evidence available on record to infer the case of criminal breach of trust against the Petitioner.

13] As far as offence under Sections 323, 504, 506 is concerned, there are no allegations of assault, causing simple hurt or Petitioner intimidating Respondent No.2 qua her relationship with deceased Abhijeet. The offence under Section 34 of IPC is not an independent offence. Said offence is to be read alongwith the main offence of criminal breach of

trust and one punishable under Section 498-A.

14] In the aforesaid backdrop, even if the case of the prosecution is appreciated as it is to be correct still no case of commission of offence could be inferred against the Petitioner.

15] In view of the law laid down by the Apex Court in the case of *State of Haryana and Ors vs. Bhajan Lal and others*, reported in **1992 Supp (1) SCC 335**, particularly para 108, we deem it appropriate to quash and set aside the FIR being Crime No.345/2015 registered with Kothrud Police Station, Pune on 11.07.2015 for the offence punishable under Sections 406, 498-A, 497, 323, 504, 406 read with Section 34 of the Indian Penal Code.

16] Fact remains that prosecution against co-accused Abhijeet has already stood abated in view of his death. Death of Abhijeet is a fact which is not disputed by Respondent

No.2. In such an eventuality Petitioner cannot be made to stand trial independent of the allegations made in the complaint qua Abhijeet and the Petitioner. That being so Petition stands allowed in terms of prayer clause (b).

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE, J.)