

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.640 OF 2022

1. Doma S/o Nagorao Barai
Aged about 51 years, Occ: Retired,
R/o Geetai Nagar, Nalwadi, Wardha.
2. Sau. Vanmala W/o Doma Barai
Aged about 53 years, Occ: Household
R/o Geetai Nagar, Nalwadi, Wardha.
3. Ramchandra S/o Nagorao Barai
Aged about 68 years, Occ: Labourer
R/o Seloo, Tah. Seloo, Dist. Wardha.
4. Sau. Pushpa W/o Ramchandra Barai
Aged about 62 years, Occ: Household
R/o Seloo, Tah. Seloo, Dist. Wardha.

... PETITIONERS

---VERSUS---

1. State of Maharashtra,
Through Police Station Officer, Wardha
City, Distt. Wardha
2. Madhuri Pundlikrao Telrandhe
Aged about 28 years, Occ: Private Job,
R/o Seloo, Tah. Seloo, Distt. Wardha.

...RESPONDENTS

Shri R.M. Patwardhan , Advocate for petitioners.
Shri H.D. Dubey, APP for respondent no.1.
Shri Manish Dubey h/f Shri D.M. Surjuse, Advocate for respondent no.2.

CORAM : G.A. SANAP, J.
DATED : JANUARY 11, 2023.

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned advocates for the parties.

2. In this writ petition filed under Article 227 of the Constitution of India read with 482 of the Code of Criminal Procedure (Cr.P.C.) petitioners have questioned the order passed by the learned Additional Sessions Judge, Wardha in Criminal Revision No.4 of 2019 dated 28.07.2022 and also the order passed by the learned Chief Judicial Magistrate, Wardha in Regular Criminal Case No.261 of 2014 dated 07.01.2019. The learned Chief Judicial Magistrate vide order dated 07.01.2019 rejected the application below Exhibit-23 made by the petitioners/accused nos.1 to 4 for their discharge for the offences under Section 498-A, 494, 420 and 506 read with Section 34 of the Indian Penal Code (IPC). Learned Additional Sessions Judge in the revision filed against the order of Chief Judicial Magistrate, partly allowed the same and discharged the accused nos.1 to 4 for the offences punishable under Section 494, 420 read with Section 34 of the IPC. However, learned Additional Sessions Judge rejected discharge application for the offences punishable under Sections 498-A and 506 read with Section 34 of the IPC. Learned Additional Sessions Judge further directed to frame the charge under Sections 417 read with Section

34 of the IPC against accused nos.1, 3 and 4.

The facts necessary for the decision of the writ petition are as follows:

3. The informant (respondent no.2 in this petition) on 18.02.2014 lodged a report at Police Station, Wardha City against the accused persons. It is stated that on 26.12.2004 she married with accused no.1 and cohabited with him for about nine years. They were blessed with two children. The accused no.2 is the first wife of the accused no.1. The accused nos.3 and 4 are brother and sister-in-law of the accused no.1 respectively. It is alleged that the accused nos.3 and 4 were instrumental in the solemnization of the marriage of the informant and accused no.1. According to the informant, the accused nos.1,3 and 4 suppressed the first marriage of accused no.1 with the accused no.2. The accused nos.1,3 and 4 therefore cheated the informant. It is further alleged that accused nos.1,3 and 4 after 1½ months of the marriage started ill-treating the informant. They abused, threatened and physically assaulted her. On two occasions, accused no.1 tried to strangle her. While narrating the specific incident, it is stated that on 12.10.2013 the accused nos.1,3 and 4 mercilessly beat the informant and declared in her presence that

they performed the marriage of the accused no.1 with her because the first wife of accused no.1 could not conceive. They threatened to call the first wife for cohabitation with accused no.1. They pressurized the informant to leave the matrimonial house. They called accused no.2. They assaulted the informant and driven her out of the matrimonial house after arrival of the accused no.2. The specific role has been attributed to the accused no.2 in this assault. The informant lodged report on 18.02.2014 with Wardha City Police Station. The Police Station registered the crime for the above offences bearing Crime No.76/2014. After investigation, the charge-sheet came to be filed against the accused nos.1 to 4 for the above offences.

4. The accused persons appeared before the learned Chief Judicial Magistrate, Wardha. They filed an application at Exhibit-23 for their discharge. The main ground pleaded in the application was that the informant was not legally wedded wife of the accused no.1. First marriage of the accused no.1 with accused no.2 was in subsistence when so-called marriage between the accused no.1 and the informant took place. It was contended that therefore offences under Sections 498-A and 494 would not get attracted against them. They further contended that there was no material to make

out the ingredients of the offences under Sections 420 and 506 read with Section 34 of the IPC. According to them, the material compiled in the charge-sheet was not sufficient to frame the charge against them for the above offences.

5. The learned Magistrate after giving an opportunity of hearing to the accused, the State and the informant rejected the said application on 07.01.2019. The accused nos.1 to 4 filed the revision against the said order. The revision came to be partly allowed as stated above. Being aggrieved by the order passed by the learned Additional Sessions Judge in the revision, they have come before this Court by filing this criminal writ petition.

6. I have heard Shri R.M. Patwardhan, learned advocate for the petitioners, Shri H.D. Dubey, learned Additional Public Prosecutor for the respondent no.1/State and Shri Manish Dubey, learned advocate for the respondent no.2. Perused the record and proceeding.

7. Shri R.M. Pathwardhan, learned advocate for the petitioners submitted that so-called marriage between the accused no.1 and informant was performed during subsistence of first marriage of the accused no.1 with the accused no.2 and therefore the

same was *void-ab-initio*. Learned advocate submitted that since the marriage of the accused no.1 and the informant was *null and void* the prosecution against the accused no.1 as the husband, and accused nos.2, 3 and 4 as relatives under Section 498-A of the IPC is not maintainable. The learned advocate submitted that this ground itself was sufficient to decide the accused for the offence punishable under Section 498A of the IPC. In order to substantiate his submission, learned advocate has placed heavy reliance on the decision of **Shivcharan Lal Verma and another Vs. State of Madhya Pradesh** [(2007) 15 SCC 369]. The Hon'ble Supreme Court in this case in an appeal filed against the conviction under Section 498-A set aside the said conviction on the ground that the marriage was not in subsistence and therefore the said provision could not have been invoked. The learned advocate submitted that the evidence compiled in the charge-sheet is not sufficient to frame the charge against the accused on various counts, sought to be asserted by the prosecution. Learned advocate, therefore, submitted that the application made for the discharge deserves to be granted.

8. Learned Additional Public Prosecutor submitted that the learned Additional Sessions Judge in his order has taken into consideration the decision in the case of **Reema Aggarwal Vs.**

Anupam [2004 (3) SCC 199] and the decision in the case of **Rajinder Singh Vs. State of Punjab** [(2015) 6 SCC 477] and was pleased to reject the contentions. Learned APP submitted that therefore on this ground and particularly in view of the fact that the informant was infact cheated for the purpose of marriage with the accused no.1, the contention of the accused persons cannot be accepted. Learned Additional Public Prosecutor further submitted that two children were born in the wedlock to the accused no.1 and the informant. Learned Additional Public Prosecutor pointed out that two children are staying with the accused no.1. The accused no.1 has admitted paternity of the children. Learned Additional Public Prosecutor submitted that the facts of this case are distinguishable from the facts in the case **Shivcharansingh** (supra) and would be covered by the decision in the case of **Reema** (supra).

9. The application for discharge was rejected. At the outset, the scope of enquiry required to be made at the stage of the discharge or framing of charge needs to be considered. The decision in the case of **Tarun Jit Tejpal .vs. State of Goa and another** [(2020) 17 SCC 556] would be the guiding principle. The Hon'ble Supreme Court in the case of **Tarun Jit Tejpal** (supra) considered the previous

decisions in the cases of *Niranjan Singh Karam Singh Punjabi, Advocate .vs. Jitendra Bhimraj Bijaya and others* [(1990) 4 SCC 76] and *Sajjan Kumar .vs. Central Bureau of Investigation* [(2010) 9 SCC 368].

10. It is held in these decisions that appreciation of evidence at the time of framing of charge under Section 228 of Cr.P.C. or while considering discharge application filed under Section 227 of Cr.P.C. is not permissible. The Court is not permitted to analyse all the material touching the pros and cons, reliability, or acceptability of the evidence. In *Tarun Jit Tejpal's* case (supra), it is held that at the time of consideration of the application for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is held that at the stage of consideration of application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients

constituting the alleged offence. At this stage, the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. It is held that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. It is further held that the law does not permit a mini-trial at the stage of deciding the discharge application or at the time of framing of charge.

11. In my view, this position would be required to be borne in mind while appreciating the submissions advanced on the merits of the matter. In order to appreciate the submissions advanced by the learned advocate on the point of nullity of the marriage of the accused no.1 with the informant and the consequent non-application of provisions of Section 498-A, it would be necessary to consider the law laid down in the case of **Reema** (supra). In the case of **Reema** the decision relied upon by the learned advocate for the accused persons in the case of **Bhaurao Shankar Lokhande and another Vs. The State of Maharashtra and another** [AIR 1965 SC 1564] was considered. In order to appreciate the submissions advanced on behalf of the parties, it would be profitable to

reproduce the paragraph 18 from the decision in the case of **Reema** (*supra*). Paragraph 18 reads thus :

“18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the ‘Evidence Act’) were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature ‘dowry’ does not have any magic charm

written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to

come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

12. In the backdrop of this proposition the applicability of the decision in the case of ***Shivcharan*** (supra) would be required to be considered. It is to be noted that the decision in the case of ***Reema*** (supra) on the point in question was approved by the three judges bench in the case of ***Rajinder*** (supra). In my view, therefore, there is a substance in the submission of the learned APP that at this stage of the proceedings, the decision in the case of ***Reema*** (supra) would be relevant and applicable to the case on hand.

13. In my view, the proposition laid down in the case of ***Reema*** (supra) would be applicable to the case in hand. It is the case of the prosecution that the accused nos.1,3 and 4 suppressed the marriage of the accused no.1 with the accused no.2 and induced the informant to marry the accused no.1. Learned Additional Sessions Judge found that the charge under Section 417 of the IPC

sustainable against the accused nos.1, 3 and 4. This observation has been made by the learned Additional Sessions Judge on *prima facie* consideration of the material compiled the charge-sheet. The informant resided with the accused no.1 for nine years as his wife. The informant when came to know about the cheating, obviously questioned the accused no.1 and accused nos.3 and 4. The statements of the witnesses on the point of the marriage and rituals performed at the time of the marriage have been recorded. In the FIR as well as in the statement recorded during the investigation, the informant has categorically stated about the ill-treatment and cruelty to her at the hands of the accused nos.1 to 4. In this case, therefore, the law laid in the case of **Reema** (supra) would be squarely applicable to frame the charge against the accused nos.1 to 4. It is to be noted that on the basis of this technical plea the contention of the accused cannot be accepted. The main charge proposed to be framed against the accused is of cheating to induce the informant to marry with the accused no.1 by suppressing his first marriage. The statements of witnesses would show that at the time of marriage of the informant and the accused no.1 they were present. They stated about the rituals performed at the time of the marriage. In my view, therefore, on this ground, the application for

discharge cannot be allowed. The learned Additional Sessions Judge on the basis of material on record and in view of the settled legal position discharged the accused nos.1 to 4 from the offences under Sections 494 and 420 read with Section 34 of the IPC. Similarly, the charge proposed to be framed under Section 417 was against the accused nos.1,3 and 4 only and not against accused no.2.

14. It is to be noted that on merits the appreciation of evidence and mini-trial at this stage is not permissible. The material compiled in charge-sheet, if considered *prima facie* would indicate that it is sufficient to frame charge against the accused persons, as held by the learned Additional Sessions Judge. In my view, on both counts, the submissions advanced on behalf of the petitioners cannot be entertained. The petition is therefore liable to be dismissed. Accordingly, the petition stands dismissed.

Rule discharged.

JUDGE

Wagh