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926-crwp-258-24

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

926 CRIMINAL WRIT PETITION NO. 258 OF 2024

1. Ranjeet s/o Chandrakant Girame
Age : 50 yrs. Occ Business,
R/o Girame Estate, Near Mahila College
Station Road, Taluka Kopargaon
Dist. Ahmednagar

**...PETITIONER
(ORIGINAL ACCUSED)**

Versus

1. Mrs. Swapnali Amol Bhaskar
Age : yrs. Occ. Home Maker,
R/o Takli Fata, Girame Vasti,
Yesgaon, Tq. Kopargaon,
Dist. Ahmednagar.

2. State of Maharashtra

**... RESPONDENTS
(ORIGINAL COMPLAINANT)**

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Advocate for the Petitioner : Mr. Suresh N. Menchirel
and Ms. Shivani Jaiswal
Advocate for Respondent No.1 : Mr. A. V. Waghmare (Appointed)
APP for Respondent No. 2 : Mr. S. B. Narwade

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 13.12.2024

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With consent of both the sides it is heard finally at the admission stage.

2. By the present Petition under Article 226/227 of the

Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner takes exception to the order dated 13.06.2023 passed by the learned Additional Sessions Judge, Kopargaon, in Criminal Revision Application No. 10/2021, thereby affirmed the order dated 26.02.2021 passed by the learned JMFC, Kopargaon for condoning the delay under Section 468 read with Section 473 of the Cr.PC., caused while lodging the private complaint.

3. Heard Ms. Shivani Jaiswal, the learned counsel appearing for the Petitioner canvassed in vehemence that Respondent No.1 had lodged a N.C. Report No.508/2016 against the present Petitioner for offence punishable under Section 506(II) of the I.P.C., however, after lapse of more than three years period, Respondent No.1 filed a private complaint for the offences punishable under Sections 323, 504, 506 read with Section 34 of the I.P.C., along with Application for condonation of delay of 1062 days.

4. After service of notice, the present Applicant appeared and resisted Application for condonation of delay. However, on 26.02.2021 the learned JMFC, Kopargaon passed the order and condoned the inordinate delay caused while lodging the complaint in respect of incident allegedly occurred on 09.09.2016. Therefore, the Petitioner

filed Cri. Rev. Appln. No. 10/2021 before the learned Additional Sessions Judge, Kopargaon, however, the learned Revisional Court dismissed revision of the Petitioner without the considering facts and circumstances of the case and no proper reasons were assigned, hence, prayed for quashing and setting aside both the orders.

5. The learned counsel appearing for the Petitioner canvassed that the learned Revisional Court passed the impugned order without considering the length of delay from the date of occurrence of the incident till filing the complaint. So also, the learned Magistrate failed to consider the provisions of Section 155, 156(3) of the Code of Criminal Code as well as ratio laid down in the case of ***Priyanka Srivastava V. State of U.P. ;(2015) 6 SCC 287*** followed in ***Vikram Johar Vs. State of Uttar Pradesh AIR 2019 SC 2109 and Babu Venkatesh and others Vs. State of Karnataka and another; 2022 LiveLaw (SC) 181.***

6. It is further canvassed that on 09.09.2016 the N.C.R. No. 508/2016 came to be registered but said N. C. Report does not reflect about fact of issuance of threat at the hands of present Petitioner / accused to attract provisions Part II of Section 506 of the I.P.C. The limitation contemplated under Section 468 of the Cr.P.C. would commence from the date on which offence was committed and within

the knowledge of the de facto complainant. Though the Respondent No.1 complainant was having knowledge about the alleged incident but she did not file the complaint within a period of three years.

7. It is further canvassed that the complaint had filed a complaint under Section 498-A of the I.P.C. but the said complaint was already decided on 17.07.2017. The proceeding under Section 125 of the Cr.P.C., came to be decided on 08.06.2017. Thereafter, a proceeding under the D.V. Act came to be decided on 25.03.2021. However, without showing sufficient cause and without providing sufficient explanation for condonation of delay, the learned JMFC, condoned the huge delay. So also, the learned Revisional Court passed the impugned order without appreciating the facts and circumstances of the case and affirmed the order passed by the learned trial Court. Therefore, prayed for quashing and setting aside both the orders. Ultimately, the Petitioner prayed for quashing and setting aside the order of issuance of process passed by the learned JMFC on 31.03.2021.

8. Per contra, the learned counsel appearing for Respondent No.1 supported the findings of both the Courts below. It is canvassed on behalf of the Respondent No.1 that initially the Respondent No.1 lodged a report with the concerned police station and reported the

incident occurred on 09.09.2016. However, the Police Authorities registered said report as NCR No. 508/2016 for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code. Thereafter, Respondent No.1 filed a private complaint along with the Application for condonation of delay and sufficiently explained the delay. The learned trial Court considered the provisions of Sections 468, 473 of Cr.PC. and condoned the delay of 1062 days caused while lodging the complaint. So also, the learned Revisional Court confirmed the said order. Therefore, the present Petitioner has not made out any substantial grounds to interfere with the concurrent findings, hence, prayed for dismissal of the Petition.

9. Having regard to submissions of rival parties, I have gone through the petition paper book. It is a matter of record that initially on 09.09.2016, the Respondent No.1 lodged a report with the Kopergaon Police Station about the incident which allegedly occurred on 08.09.2016 at about 19.00 hours. However, on 09.09.2016, the Police Authority registered the N.C.R. No.508/2016 for the offences punishable under Sections 323, 504, 506 read with Section 34 of the I.P.C.

10. It is a matter of record that the Respondent raised domestic

litigation by filing a proceeding under the D.V. Act, Hindu Marriage Act as well as under Section 125 of the Cr.P.C. The Respondent was allegedly been forced to compromise the proceeding under Section 498-A of the I.P.C. and when the Respondent No.1 refused to do so, she was assaulted. Thereafter, on 13.07.2020, the Respondent filed a criminal complaint SCC No. 301/2020 before the learned JMFC, Kopargaon for the offences punishable under Sections 323, 504, 506 of the I.P.C., however, there was delay of 1062 days.

11. Section 323 of the I.P.C. provides punishment to the extent of one year with or without fine. Section 504 provides punishment up to two years. Section 506 provides punishment for a period of 2 years and in II Part to the extent of 7 years are with fine or with both.

12. Section 498-A of the I.P.C. provides for taking cognizance after lapse to period of limitation as under :

498-A- Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

13. Section 406 of the IPC provides punishment up to 7 years and as such, the Respondent/Complainant has filed the complaint prior to expiry of 7 years. Therefore, considering the nature of offence as well as the provisions of Section 468 and 473 of Cr.P.C., the learned trial Court condoned the delay as per the law laid down in ***Bharat Hybrid Seeds and Agro Enterprises, Kurnool Vs. The State,;1978 CriLJ 61.***

14. The learned Revisional Court passed the impugned order dated 13.06.2023 holding that no bar is created under Section 468 of Cr.P.C., when the complaint has been filed prior to expiry of 7 years period, which has been provided for taking cognizance for the offence punishable under Sections 506 coupled with provisions of Section 323, 504 and 506 of I.P.C. Therefore, taking into consideration the law laid down in ***Bharat Hybrid Seeds and Agro Enterprises, (supra)***, I do not find that the impugned orders are perverse, illegal, bad in law. Much less the order of issuance of process cannot said to be faulted. In view of the above discussion, the present Petition is dismissed. No order as to costs.

15. Accordingly, the rule is discharged.

16. The fees of the appointed counsel is quantified to Rs. 10,000/-.
The quantified fees of Rs.10,000/- be paid to the learned counsel for
Respondent No.1 (Appointed) from the Legal Aid Panel.

(Y. G. KHOBRADE, J.)

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