



**3IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 107 OF 2019

The State of Maharashtra
Through the Public Prosecutor,
Jalna (Ori. Complainant)

....Applicant
(Ori. Complainant)

Versus

Chandraprakash Kailash Chavan
Age: 32 years, Occu.: Service (Teacher),
R/o. Village Daha, Talulka Mantha,
Dist.Jalna.

.....Respondent
(Ori Accused)

.....

APP for Applicant : Mrs.Ashlesha S.Deshmukh
Advocate for Respondents : Mr. Shrikrashna B. Solanke

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 APRIL, 2024

PRONOUNCED ON : 23 APRIL, 2024

ORDER :-

1. Aggrieved by the judgment and order of acquittal passed by learned Additional Sessions Judge, Jalna in Criminal Appeal No.99 of 2015, State is intending to file appeal and hence, instant leave application.

2. Learned APP pointed out that crime was registered for offence

under Section 498-A read with 34 of the Indian Penal Code (IPC) and for offence under Sections 3 and 4 of the Dowry Prohibition Act. She pointed out that in all nine accused were tried before learned Judicial Magistrate First Class (JMFC), Mantha, who accepted case of prosecution and recorded conviction under Section 498-A of the IPC and under Section 4 of the Dowry Prohibition Act against accused no.1 and he was acquitted for charge under Section 4 of the Dowry Prohibition Act. She pointed out that learned trial Court acquitted accused nos.2 to 9 from all the charges except accused no.1 husband. She further pointed out that said judgment of conviction was taken up in appeal before learned Additional Sessions Judge, Jalna, who acquitted accused no.1 by allowing the appeal. It is pointed out that, there is improper appreciation of evidence. Learned APP took this Court through the testimony of informant and would submit that marriage is of 2007. That initially husband was working at different place whereas informant herself was a Teacher and was staying with in-laws. That husband used to visit his house at Nachanwel on Saturdays and Sundays. That whenever husband came, in-laws levelled false allegations against informant and believing them, husband ill-treated informant. It is pointed out that subsequently, there was demand of money for purchase of a plot or in lieu of it

purchase of Indica car. That on account of non-fulfilment of said demand, there was ill-treatment and therefore, she filed complaint. That there are allegations of demand, beating and suspicion of character. Learned Judicial Magistrate First Class has correctly appreciated the prosecution evidence and held accused no.1 guilty. However, said findings have been overturned by learned Additional Sessions Judge by acquitting accused no.1. She pointed out that there is no good ground assigned for acquittal. Therefore, there being a good case in appeal, she prays for leave to file appeal.

3. In answer to above, learned Counsel for accused would submit that prosecution has miserably failed to establish the case even before the learned Judicial Magistrate First Class, but there was improper appreciation of evidence and conviction was recorded of only against accused no.1 husband whereas rest of the accused were acquitted. Therefore, matter was taken in appeal. In Appellate Court, there was proper appreciation of evidence and appeal was allowed. Learned Appellate Court appreciated evidence and held that prosecution has failed to establish the case and rightly acquitted accused no.1 husband. There is no reason to interfere in the same finding and so it is prayed that leave be refused.

4. After considering the submissions of both sides and on going through the papers, it seems that nine accused persons were tried before the learned JMFC, Mantha vide R.C.C. No.74 of 2012 for commission of offence under Section 498-A read with Section 34 of the IPC and under Sections 3 and 4 of the Dowry Prohibition Act. Before learned JMFC, prosecution had adduced evidence of in all seven witnesses including informant. Learned Trial Court on appreciating oral and documentary evidence reached to a finding that case has been proved beyond reasonable doubt but only against accused no.1 husband and prosecution has failed to bring home the culpability of accused nos.2 to 9 and thereby acquitted them.

5. Judgment and order of conviction of accused no.1 husband seems to have been taken up by way of appeal before learned Additional Sessions Judge, Jalna vide Criminal Appeal No.99 of 2015. On re-appreciation of evidence, present respondent – accused no.1 husband has been acquitted.

6. Perused both the judgments. It transpires that informant was married to accused respondent on 14-05-2007 but R.C.C. No.74 of 2012 is instituted on 21-04-2012 levelling allegations of above

offence. It also come on record that initially present respondent was working at Akole in Ahmednagar District, whereas informant resided with parents-in-law and other in-laws at Nachanwal. Informant herself stated that accused no.1 husband used to visit his house on Saturdays and Sundays. However, her accusations are that whenever her husband came, he used to enquire with his parents whether they were properly cared and looked after and they made complaint that they were not taken care of. They also taunted and commented on her looks and also instigated husband to harass and ill-treat her. According to informant, subsequently, her husband got transferred at Kannad, but he used to seek her signature on withdrawal slip and withdraw her salary. Then she has alleged that accused no.1 started making demand of Rs.5,00,000/- for purchasing a plot at Aurangabad or to purchase Indica Car and when she refused, she alleged that he beat her and drove her out of house.

7. However, while under cross-examination, informant is unable to state when said instances of alleged ill-treatment took place, when exactly demand was made and her evidence is also found to be silent about exact nature of ill-treatment being subjected to her by her husband. Therefore, *ex facie* evidence of informant itself is full of

bald, general and omnibus allegations. As pointed out, on same set of evidence in-laws with whom informant spent maximum time, are acquitted. However, husband alone is convicted by learned JMFC.

8. Therefore, taking into consideration above material and on hearing learned APP, this Court is of the opinion that no fruitful purpose would be served by permitting State to file appeal, more particularly, in the backdrop of such weak evidence of very informant herself. Resultantly, leave so prayed is required to be refused. Accordingly, I pass following order :

ORDER

Application for Leave to Appeal by State No.107 of 2019 is rejected.

(ABHAY S. WAGHWASE)
JUDGE