



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

CRIMINAL REVISION APPLICATION NO.356 OF 2004

- 1) Manik S/o Dnyaneshwar Alse,
Age-28 years, Occu:Agril.,
R/o-Alswadi, Tq-Majalgaon,
District-Beed,
- 2) Dnyaneshwar s/o Kisanrao Alse,
Age-58 years, Occu:Agril.,
R/o-Alsewadi, Tq-Majalgaon,
District-Beed,
- 3) Bhaskar Dnyaneshwar Alse,
Age-22 years, Occu:Agril.,
R/o-As Above,
- 4) Sow. Kusum W/o Dnyaneshwar Alse,
Age-50 years, Occu:Agril.,
R/o-As Above.

...APPLICANTS
(Names of Applicant Nos.2 and 4
deleted as expired)

VERSUS

The State of Maharashtra

...RESPONDENT

...

Ms. Sonali Ganesh Somwanshi Advocate h/f. Mr. N.L. Jadhav
Advocate for Applicant Nos. 1 and 3.
(Names of applicant Nos.2 and 4 deleted as expired).
Mr. D.J. Patil, A.P.P. for Respondent - State.

...

CORAM: S.G. MEHARE, J.

DATE : 15th JULY, 2024

ORAL JUDGMENT :

1. Heard the learned counsel for the applicants and learned APP for the State.
2. Applicant Nos. 2 and 4 have been reported dead long back. Hence the Revision Application is abated against them.
3. Applicant Nos. 1 and 3 along with the deceased co-accused were convicted for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code and directed to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- each. They were also convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and directed to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- each, by the learned Judicial Magistrate, First Class, Majalgaon.
4. The First Appellate Court, in Appeal, reduced the sentence from three years rigorous imprisonment to two years rigorous imprisonment and fine of Rs.500/- each for the offence punishable under Section 498-A of the Indian Penal Code. However, the sentence to suffer rigorous imprisonment for two

years and a fine of Rs.500/- for the offence punishable under Section 324 of the Indian Penal Code has been maintained.

5. Learned counsel for the applicants has vehemently argued that both Courts did not consider the delay in filing the complaint, which was not specifically explained. The mental health of the victim/wife was also not correctly appreciated. She has admitted that she was under psychiatric treatment. The witnesses to the seizure panchnama have not supported the prosecution case. The witnesses are on contradictions in material facts. The brother of the victim was a planted witness who came eight days after the incident. This material fact has also been ignored. The medical opinion was able to draw two possible views considering the injuries suffered by the injured. The ingredients of Section 498-A of the Indian Penal Code have not been established beyond a reasonable doubt. But both Courts believed the victim. There is absolutely no evidence before the Court that all the accused, with common intention, have caused injuries to the wife and ill-treated her for the demand of dowry. There was nothing on record to believe that Section 4 of the provisions of the Dowry Act has been attracted. The wife has settled the dispute amicably in R.C.C. No.180 of 2000, registered for the offences punishable under Sections 494, 109 read with

Section 34 of the Indian Penal Code. A lump-sum amount has been paid to the victim/wife. These are the mitigating circumstances. She prayed to allow the Revision by quashing and setting aside both the Judgments.

6. Learned APP would submit that both Courts below have correctly appreciated the evidence. The evidence of the panch on seizure panchnama does not make the prosecution case doubtful. The so-called contradictions and omissions are not material. The evidence produced by the prosecution inspires confidence. The so-called two possible views on medical evidence would not support the contention of the applicants. For constituting an offence under Section 498-A of the Indian Penal Code, grievous injury is not essential. The term 'cruelty' has been defined under Section 498-A of the Indian Penal Code. 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 in on account of failure by her or any person related to her to meet such demand, is also 'cruelty' as defined under Section 498-A of the Indian Penal Code. The conduct of the applicants was wilful in nature as it was likely to drive the wife to cause danger to her life, limb or health (mental or physical). He would submit that considering the scope of the Revision under Section 397 read

with Section 401 of the Code of Criminal Procedure, there are no apparent errors on the face of the record that warrant interference with the impugned Judgments and orders. He prayed to dismiss the Revision.

7. Perused the papers and material placed before the Court with the impugned Judgments and orders. Both Courts were consistent in the appreciation of facts. The victim was consistently complaining against the applicants that she was ill-treated for the demand of dowry. The injury was also proved which caused mental and physical pain to the wife/woman. Learned APP is correct in saying that to establish the offence under Section 498-A of the Indian Penal Code, causing grave injuries is not essential. The conduct of the accused was wilful in nature. That drove her from the house, and she caused the injuries. The reason for causing injury was the demand for dowry, which was established. The material placed on record is sufficient to believe that the injuries were caused. There are no *prima facie* errors in appreciation of the evidence. However, the submission is made that both the applicants were behind bars for ten days after the conviction was confirmed in the Appeal.

8. There were mitigating circumstances; the victim/ wife settled the dispute with the applicants on receiving a lump-sum

amount. That shows that she might have waived the allegations levelled against the applicants in the police report. The prosecution has proved the charges beyond reasonable doubt. However, the subsequent development of settlement would help the applicants to reduce the sentence against them. Hence, the following order:-

ORDER

(I) The Revision Application is partly allowed.

(II) The Judgment of conviction passed by the Judicial Magistrate First Class, Majalgaon in Regular Criminal Case No.86 of 1998 and confirmed by the First Appellate Court i.e. Ist Ad-hoc Additional Sessions Judge, Beed in Criminal Appeal No.5 of 2001, is maintained.

(III) However, the sentence to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/- each for the offence punishable under Section 498-A and Section 324 read with Section 34 of the Indian Penal Code, is reduced to the period of ten days the applicants have undergone after the Appeal was partly allowed by the First Appellate Court.

(IV) Fine amount paid, if any, be forfeited to the Government.

(V) Surety stands discharged, and surety bonds stand cancelled.

(VI) Record and Proceedings be returned to the trial Court.

[S.G. MEHARE, J.]

asb/JULY24