



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 2249 / 2020

1. Shabbir s/o Hussain Pathan
Age : 55 years, Occu – Service,

2. Munabee w/o Shabbir Pathan
Age : 50 years, Occu: Household,

Both are R/o Deep Co-op. Housing Society,
Plot No.44, Sector 14, Koperkhairne,
Navi Mumbai.

...Applicants

Versus

1. State of Maharashtra
(Through Police Station, Paranda,
Tq. Paranda, Dist. Osmanabad).

2. Farzana Shabbir Pathan
Age : 38 years, Occu.: Household,
R/o : Loni, Tq. Paranda, Dist. Osmanabad.

...Respondents

— — —
Advocate for the Applicants : Mr. V.C. Patil h/f
Mr. U. B. Bondar

A.P.P. for Respondents /State : Ms. S.S. Joshi

Advocate for Respondent No.2 : Mr. Vaibhav N. Shinde (appointed)

— — —

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 1 MARCH 2024

PRONOUNCED ON : 2 APRIL 2024

FINAL ORDER [Per Shailesh P. Brahme, J.] :

. Heard both sides for final disposal at the admission stage.

2. The applicants are invoking jurisdiction under Section 482 of the Code of Criminal Procedure to quash First Information Report of C.R. No.0034/2020 registered with Paranda Police Station, Tq. Paranda, Dist. Osmanabad for the offences punishable under Sections 498A, 504, 506 read with 34 of the Indian Penal Code and to quash consequential Regular Criminal Case No.96/2020 pending before the Judicial Magistrate First Class, Paranda.

3. The respondent no.2 is the informant who lodged report of the offence in question on 17.02.2020 against the applicants. Applicant no.1 is her husband, whereas applicant no.2 is alleged first wife of applicant no.1. She married with the applicant no.1 on 22.02.2009 but was made to reside at Loni, Taluka Paranda under a pretext that applicant no.1 was not having accommodation in Mumbai. She conceived a daughter. Initially, applicant no.1 is stated to be regular in visiting Loni from Mumbai and was giving expenses. She was being given false promises and

she was made to stay at Loni. Thereafter she was tortured for Rs.1,00,000/- for transferring land in the name of applicant no.1. Both the applicants are stated to have abused and threatened her.

4. Learned Counsel for the applicants submits that applicant no.1 and 2 were already married since 1984 and they have six children out of the wedlock. Respondent no.2 is said to have married with one Latif Mehboob Mulani on 21.10.2001. It is submitted that no offence under Section 498A can be made out as respondent no.2 could not have legally married to the applicant no.1. It is being submitted that the claim under Section 125 of Cr.P.C. filed by the respondent no.2 against the applicant no.1, has already been negatived for the same reason. Respondent no.2 has secured maintenance from her husband Latif. Hence, by implication of estoppel, informant cannot be said to be wife of the applicant no.1. Learned Counsel relies upon the judgment in the matter of **Kantharaju Vs. State of Karnataka**, LAWS(KAR) 2023 7 1078.

5. Learned APP and learned Counsel for the respondent no.2 oppose the submission of the applicants. They would submit that applicant no.1 is married with informant on 22.02.2009 and they have a daughter out of the wedlock. Notwithstanding the

relationship of the applicants inter se, penal action under Section 498A would sustain. The proceeding under Section 125 of Cr.P.C. are quasi civil in nature, therefore principles of estoppel can have no role. Lastly they would submit that penal action under Section 498A can be initiated in respect of the marriage which may not be legal in the strict sense.

6. Learned Counsel for the respondent no.2 tenders on record following judgments :

- (i) Reema Aggarwal Vs. Anupam and Others
2004 AIR SCW 344
- (ii) Rajinder Singh Vs. State of Punjab
AIR 2015 SC 1359
- (iii) Doma Nagorao Barai & Ors. Vs. State of Maharashtra & Anr.
Criminal Writ Petition No.640/2022
- (iv) Dnyandeo Dhakane Vs. State of Maharashtra and Ors.
2006 Cri. L.J. 4581
- (v) Bhupendra Singh Rajawat Vs. Ranjeeta Rajawat
Criminal Revision No.527/2022
- (vi) Shivcharan Lal Verma and Ors. Vs. State of Madhya Pradesh
Criminal Appeal No.735/1996
- (vii) P. Sivakumar & Ors. Vs. State Rep. By the Deputy
Superintendent of Police Etc., 2023

7. We have considered rival submissions of the learned Counsel advanced across the bar. Before we delve upon the submissions on a legal point as to whether penal action under

Section 498A of IPC can be maintained by a wife who could not have legally married, it is necessary to narrate relevant facts.

8. It reveals from record that applicant no.1 and 2 are married since 1984. They have six children out of the marriage. Applicant no.1 contracted marriage with the respondent no.2 on 22.02.2009. A daughter is born out of the wedlock. Applicant no.1 resides at Mumbai, whereas respondent no.2 resides at Loni, Taluka Paranda Dist. Osmanabad.

9. Respondent no.2 was married to one Latif on 21.10.2001. She had filed Criminal M.A. No.104/2004 for maintenance under Section 125 against Latif. It was allowed and she was awarded maintenance of Rs.400/-. Respondent no.2 filed Criminal M.A. No.265/2015 against applicant no.1 under Section 125 of Cr.P.C. It was rejected by order dated 02.03.2019. It has been recorded that she was married to Latif and the marriage was subsisting. She failed to prove valid marriage with the applicant no.1.

10. We have gone through order dated 02.03.2019 passed by the Judicial Magistrate First Class, Paranda in Criminal M.A. No.265/2015, rejecting the application of the respondent no.2 under Section 125 of Cr.P.C. We have also gone through order dated 13.02.2006 passed in Criminal M.A. No.104/2004 awarding

maintenance to the respondent no.2 from Latif. We find that respondent no.2 was already married to Latif. There is neither pleading, nor material on record to show that marriage between them was dissolved. During subsistence of the first marriage, she contracted marriage with applicant no.1 on 22.02.2009. These facts indicate that marriage between applicant no.1 and respondent no.2 was not legally possible.

11. In the matter of Shivcharan Lal Verma (supra), Hon'ble three judges' bench of the Supreme Court has laid down that the prosecution under Section 498A of IPC would not be attracted, if the marriage of the accused person with the victim is null and void. This judgment has been consistently followed, the latest being the matter of P. Sivakumar (supra).

12. The judgment rendered in the matter of Reema Aggarwal (supra) did not refer to Shivcharan Lal Verma (supra). Similarly, judgment rendered in the matter of Rajinder Singh (supra), also did not refer to Shivcharan Lal Verma (supra). We have noticed that the judgment passed in the matter of Shivcharan Lal Verma (supra) has been followed by various High Courts namely Punjab & Haryana, Chattishgarh, Kerala, Karnataka and Madhya Pradesh. Judgment of Karnataka High Court in matter of Kantharaju (supra) has been cited by applicants.

13. Learned Counsel for the respondent no.2 seeks to rely on judgment of the Single Judge in the matter of Doma Nagorao Barai & Ors. (supra) to pursue us to follow ratio laid down by the Supreme Court in the matter of Reema Aggarwal (supra). We are of the considered view that the judgment in the matter of Shivcharan Lal Verma (supra) passed by the three judges' bench of the Supreme Court, is prior in time. In such situation, we have no alternative than to follow Shivcharan Lal Verma (supra). We are in disagreement with a view taken by the Single Judge in the matter of Doma Nagorao Barai.

14. Learned Counsel has also pressed into service principles of estoppel as informant had filed proceeding under Section 125 of Cr.P.C. against first husband and secured maintenance. Learned Counsel for the respondent no.2 would repel this submission by citing judgment in the matter of Dnyandeo Dhakane (supra). However, it is not necessary in the present matter to examine as to whether principles of estoppel can be invoked or not. We have already recorded that no offence can be made out under Section 498A in the wake of the law laid down by the Supreme Court in Shivcharan Lal Verma (supra). Therefore, further discussion on the point of estoppel is unwarranted.

15. However, apart from Section 498A, the applicants are also

being charged under Sections 504 and 506 read with Section 34 of the I.P.C. Those cannot be said to be unsustainable since that would get attracted as facts even if the marriage between applicant no.1 and respondent no.2 was not legally possible.

16. In the result, criminal application deserves to be allowed. Hence the following order :

ORDER

- (i) The Criminal Application is allowed partly.
- (ii) The impugned FIR bearing Crime No.34/2020 registered at Police Station Paranda, Tq. Paranda, District Osmanabad for the offences punishable under Sections 498A of the Indian Penal Code and consequential Regular Criminal Case No.96/2020 pending before the Judicial Magistrate First Class, Paranda, are quashed and set aside. However the prosecution for offences punishable under Sections 504, 506 read with Section 34 of I.P.C. would continue.
- (iii) We quantify remuneration of learned Advocate for respondent no.2 at Rs.3000/-.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE