



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

921 CRIMINAL WRIT PETITION NO. 1746 OF 2023

1. Chayabai Sahebrao Hiwale
2. Amol Sahebrao Hiwale

..PETITIONERS

-VERSUS-

The State of Maharashtra

..RESPONDENT

...

Advocate for the Petitioners : Mr. Gadegaonkar Bharat N.

APP for Respondent/State : Mr.C.V. Bhadane

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 14th August, 2024.

P.C.:

1. By this writ petition, the petitioners are challenging the judgment and order dated 13th July, 2023 passed by the Additional Sessions Judge, Ambad in Criminal Revision No.52 of 2021 thereby dismissing the revision and confirming the order dated 22nd March, 2021 passed by the Judicial Magistrate, First Class, Ghansawangi (For short, "trial Court") below Exhibit-50 in R.C.C. No.63 of 2017 rejecting the application of the petitioners seeking discharge for the offences punishable under sections 498-A, 323, 504 read with 34 of the Indian Penal Code (For short, "I.P.C.").
2. The learned counsel for the petitioners, on instructions, seeks leave to withdraw the petition for petitioner no.1 Chayabai Hiwale. Considering his request, the petition is allowed to withdraw to the

extent of petitioner no.1. The petition is dismissed as withdrawn to the extent of petitioner no.1.

3. It is contention of the learned counsel for petitioner no.2 that petitioner no.2 is brother-in-law of the complainant. The complainant has filed the complaint under sections 498-A, 323, 504 read with 34 of the I.P.C. against the petitioner and co-accused. The trial Court has discharged the brothers of the petitioner Vinod Hiwale and Manoj Hiwale. The allegations against Manoj and Vinod Hiwale and the petitioner are the same but this fact is not considered by trial Court and has passed the impugned order and requested to allow the petition.

4. It is contention of learned APP that the allegations against the petitioner are that he along with co-accused mentally and physically harassed the complainant. The trial Court has passed the reasoned order and it is rightly confirmed by the Sessions Court. No interference is required in it and requested to dismiss the writ petition.

5. Perused the impugned orders passed by the trial Court as well as Sessions Court.

6. The Sessions Judge has allowed the discharge application filed by co-accused Vinod and Manoj Hiwale and has rejected the plea of the petitioner. It appears from the record that the allegations against the discharged co-accused and the petitioner are same. Discharged co-accused and petitioner are real brothers. Considering this aspects, the Sessions Judge should have considered this fact as the allegations

against the discharged co-accused and present petitioner are the same and I pass the following order :-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The petitioner no.2-Amol Hiwale is discharged from R.C.C. No.63 of 2017 pending before the Judicial Magistrate, First Class, Ghansawangi.

[SHIVKUMAR DIGE, J.]

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