



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.839 OF 2024

- 1 Manoj Kantilal Gaikwad,
Age 37 yrs., Occ. Service as
Branch Manager, Bank of
Maharashtra, Nimkhedi Branch,
R/o C/o Bank of Maharashtra,
Nimkhedi Branch, Tq. Muktainagar,
Dist. Jalgaon.
- 2 Kantilal Zamu Gaikwad,
Age 64 yrs., Occ. Pensioner,
- 3 Sunita w/o Kantilal Gaikwad,
Age 54 yrs., Occ. Household,
- 4 Niraj Kantilal Gaikwad,
Age 31 yrs., Occ. Nil,

Applicant Nos.2 to 4 are
r/o Bhushan Colony,
Near Girana Tank, Kilbil School,
Jalgaon, Tq. & Dist. Jalgaon.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Investigating Officer,
Police Station, Nimbhora,
Tq. & Dist. Jalgaon.
- 2 Pinki Manoj Gaikwad @
Pinki Ashok More,
Age 26 yrs., Occ. Household,
R/o Nimbhora (Bk), Tq. Raver,
Dist. Jalgaon.

... Respondents

...

Mr. M.V. Salunke, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. G.S. Rane, Advocate for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 13th JUNE, 2025

PRONOUNCED ON : 11th JULY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, initially for quashment of First Information Report vide Crime No.166/2023 dated 24.08.2023 registered with Police Station, Nimbhora, Dist. Jalgaon, for the offence punishable under Sections 420, 498-A, 494, 504, 506, 510 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.4/2024 pending before learned Judicial Magistrate First Class, Raver, Tq. Raver, Dist. Jalgaon.

2 Heard learned Advocate Mr. M.V. Salunke for applicants, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. G.S. Rane for respondent No.2.

3 Before we consider the matter, it will not be out of place to mention here that as submissions were made that Advocate for applicants would place the concrete proposal for settlement, he was permitted by our order dated 20.03.2025. Accordingly, he put the proposal which is signed by applicant No.2 and we asked respondent No.2 to reply. Accordingly, the reply has also been given. The proposal by applicants was not acceptable to her, but her demands were more and for that purpose she has stated that taking into consideration the financial capacity of applicants she is putting the said proposal. The said proposal of respondent No.2 was not then acceptable to applicants. Therefore, though this is a matrimonial dispute, we drop the idea of even sending the matter for mediation, as there was a wide gap in the proposals and we will not be mentioning about the said proposals hereinafter.

4 Learned Advocate appearing for applicants submits that taking into consideration the First Information Report and contents of charge sheet it can be seen that offences are not made out against the applicants. The informant states that she got married to applicant No.1 on 08.09.2018, but at that time applicant No.1 had not disclosed that there was his earlier marriage and what happened to that marriage or what was the status of the same on the date of marriage. It is an admitted position that the couple has four years daughter and one year son on the date of First Information Report. She has

specifically stated that after three months of marriage she as well as applicant No.1 went to reside at Shahada, as applicant No.1 was employed as Branch Manager at Padalda. After the delivery of daughter she states that her husband left her at Jalgaon in the matrimonial home, wherein other applicants were residing i.e. father-in-law, mother-in-law and brother-in-law. She states that she was humiliated as she has delivered daughter, who had a unique skin disease. Mother-in-law used to abuse her and give pinching words. Whenever the husband used to come from Shahada, he used to assault her because of the instigation of other accused persons. She states that husband was avoiding to prepare Aadhar card or other official documents. She then states that when her husband got transferred to Shirpur by insisting she went along with husband to stay there, thereafter the son was born. Even after the son was born, she was assaulted by husband. The husband used to come late in night after drinking liquor. He used to abuse her as beggar. When she insisted that the Aadhar card and other official documents should be prepared, at that time, husband raised quarrel with her in February, 2023 and drove her out of the house. It is then stated by her that in the notice issued by the husband there is mention of the first marriage of husband and, therefore, on that count she states that since the first marriage is in existence by keeping her in dark and to deprive her of her legal rights, she has been harassed.

5 Learned Advocate appearing for applicants submits that notice was issued by applicant No.1 and it is forming part of the charge sheet, wherein it is stated that he got acquainted with respondent No.2 in a marriage and had the knowledge that there is no legal divorce between applicant No.1 and his earlier wife. With the consent of respondent No.2, respondent No.2 and himself were residing in live-in-relationship. Applicant No.1 is not going away from his responsibility towards the children. Even today also applicant Nos.2 and 3 are making provision for the upbringing of the children. Due to the said love and affection only the applicants were willing to settle the dispute for securing the future of children. Even if we take the things as it is, it would clarify that respondent No.2 was living with applicant No.1 at the place of his work and was not in contact on daily basis with the other applicants. Ingredients of Section 494 of the Code of Criminal Procedure would not be applicable when there is no proof for second marriage, rather the first marriage of applicant No.1 is in existence. He relies on the decision by this Court in **Kantilal Zamu Gaikwad and others vs. The State of Maharashtra and another** in Criminal Writ Petition No.1223 of 2017 decided on 23.04.2018, to which SMT. JUSTICE VIBHA KANKANWADI was party. The petitioners therein had filed the said petition for quashing and setting aside First Information Report and the proceedings arising out of the same. Earlier wife had lodged First Information Report with Ramanand

Police Station, Jalgaon for the offence punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code and charge sheet was filed vide Regular Criminal Case No.323/2017 before 5th Civil Judge Junior Division and Judicial Magistrate First Class. Thereby this Court had taken a note of the fact that wife got married to applicant No.1 herein on 19.02.2015 and present informant – respondent No.2 states that she got married on 08.09.2018. No proof has been adduced or collected by Investigating Officer regarding the fact that there is legal marriage between applicant No.1 and respondent No.2, then provisions of Section 498-A of the Indian Penal Code will not get attracted.

6 Per contra, learned APP for respondent No.1 and learned Advocate for respondent No.2 strongly opposed the application. Learned Advocate for respondent No.2 relies on the affidavit-in-reply of informant to the main application itself, which is nothing but reiteration of contents of First Information Report. It is then submitted that informant was not aware about first marriage of applicant No.1, as it was not disclosed by applicant No.1 at all. Now, he cannot come and say that the fact was within the knowledge of informant. The said fact will have to be then proved by prosecution and, therefore, First Information Report and proceedings cannot be quashed and set aside. All the details have been given as regards how the

informant was harassed physically as well as mentally. When the earlier marriage was suppressed, that itself amounts to mental cruelty. He relies on the decision of the Hon'ble the Single Bench of High Court of Allahabad in **Adarsh Yadav vs. The State of Uttar Pradesh and another** in Application No.27734 of 2024 decided on 20.09.2024, wherein relying upon **Reema Aggarwal vs. Anupam and others** [2004 AIR SCW 344] it has been held that -

“The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498-A. It would be appropriate to construe the expression “husband” to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B of IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The obscene of a definition of “husband” to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as “husband” is no ground to exclude them from the purview of Section 304-B or 498-A of IPC.”

Therefore, he submits that this is not a fit case for exercise of powers under Section 482 of the Code of Criminal Procedure.

itself the informant has come with a case that her marriage is performed on 08.09.2018 with applicant No.1 and at that time he had suppressed his earlier marriage. When this statement is made, then she will have to then bring it on record the status of the first marriage. In fact, it presupposes that the said marriage is still in existence or it was in existence as on the date of her marriage. Now, if the said fact was not disclosed to her, it cannot be the ground to validate her marriage. In **Shivcharan Verma and others vs. The State of Madhya Pradesh** [2002 (2) Crimes 177] Hon'ble Supreme Court has ruled that a valid marital relationship is prerequisite for prosecution under Section 498-A of the Indian Penal Code. The Hon'ble Supreme Court noted that if the marriage is null and void, the provisions of Section 498-A of IPC cannot be invoked. Even in another matter Hon'ble Allahabad High Court in **Akhilesh Kesari vs. The State of Uttar Pradesh** in Application No.38288 of 2023 has ruled that second wife cannot maintain complaint against husband under Section 498-A of the Indian Penal Code. Hon'ble Supreme Court in **P Sivakumar and others vs. State represented by the Deputy Superintendent of Police etc.** in Criminal Appeal Nos.1404-1405 of 2012 with Criminal Appeal No.1408-1409 of 2012 decided on 09.02.2023 held that the conviction under Section 498-A of the Indian Penal Code is not sustainable when marriage is found to be null and void. Hon'ble Single Bench of Gujarat High Court in **Harshidaben Devshibhai Bhedarda vs. The State of Gujarat** in Criminal

Miscellaneous Application No.14080 of 2022 decided on 18.09.2023 relied on **U. Suvetha vs. State by Inspector of Police and another** [(2009) 6 SCC 757], wherein it has been observed that -

“In the absence of any statutory definition, the term ‘relative’ must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word ‘relative’ would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.”

The decisions of the Hon’ble Single Judges of the Delhi High Court were considered and then it is held that taking into consideration the facts that the husband marries once again during the existence of earlier marriage, then the second marriage being void, the second wife cannot file First Information Report against husband for the offence punishable under Section 498-A of the Indian Penal Code. Thus, here it is to be noted that when in First Information Report itself she had stated about the marriage and for her marriage also it appears that when Investigating Officer had asked for documentary proof, the informant – respondent No.2 in her supplementary statement dated 24.08.2023 has stated that since her marriage with applicant No.1 was performed in a simple way, they had not printed the invitation card nor had taken the photographs. That means, documentary evidence is not available regarding the valid marriage even *prima facie*. Only statements of

witnesses are there. Further, it is not only the responsibility of the bridegroom's side to disclose all the facts, it is equally also the duty of the bride side to make inquiry and get the information regarding status of bridegroom. For attracting the offence under Section 420 of the Indian Penal Code the prosecution has to prove ingredients of Section 420 of the Indian Penal Code. There is no question of delivery of property in the present case involved, however, for offence under Section 417 of the Indian Penal Code ingredients of Section 415 of the Indian Penal Code are required to be proved. Even in that also transfer of property is one of the key ingredients and by using the word 'and' it has to be brought that such act or omission causes or is likely to cause damage or harm to the person, body, mind or reputation to the property. Therefore, these ingredients are not *prima facie* made out. The marriage with informant itself is second marriage and, therefore, ingredients of Section 494 of the Indian Penal Code are not attracted at all. Other Sections i.e. Sections 504, 506, 510 of the Indian Penal Code are non cognizable and, therefore, First Information Report under Section 154 of the Code of Criminal Procedure was not maintainable. Therefore, even after taking the contents of First Information Report/material in the charge sheet against all the applicants *prima facie* offences are not made out and, therefore, it would be an abuse of process of law if the applicants are asked to face the trial.

8 Unfortunately, the efforts for mediation failed. But then we cannot give a go by to the legal requirements.

9 The informant along with children has filed an application under Section 12 of the Protection of Women from Domestic Violence Act before learned Judicial Magistrate First Class, Raver. To this, we would only say that even a person in live-in-relationship is considered as respondent under the Domestic Violence Act. The parameters there are different.

10 Further, on merits also, in this case, most of the time it appears that the informant was staying with applicant No.1 and occasionally she used to be with other applicants. On this ground also First Information Report and the proceedings deserve to be quashed and set aside.

11 For the above said reasons, following order is passed.

ORDER

i) Criminal Application stands allowed.

ii) The proceedings in Regular Criminal Case No.4/2024 pending before learned Judicial Magistrate First Class, Raver, Tq. Raver, Dist. Jalgaon arising out of First Information Report vide Crime No.166/2023 dated 24.08.2023 registered with Police Station, Nimbhora, Tq. Raver, Dist.

Jalgaon, for the offence punishable under Sections 420, 498-A, 494, 504, 506, 510 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Manoj Kantilal Gaikwad**, 2) **Kantilal Zamu Gaikwad**, 3) **Sunita w/o Kantilal Gaikwad** and 4) **Niraj Kantilal Gaikwad**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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