



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

CRIMINAL APPLICATION NO. 887 OF 2023

1. Musin Babulal Thengade,
Age : 37 Years, Occ. Business,
R/o. Malwati Road, Maharana Pratap Nagar,
Latur, Maharashtra (Husband)
2. Babulal Allauddin Thengade,
Age : 57 Years, Occ. Business,
R/o. Malwati Road, Siddheswar Nagar,
Latur, Maharashtra. (Father-in-law)
3. Vasim Babulal Thengade,
Age : 33 Years, Occ. Business,
R/o. Malwati Road, Siddheswar Nagar,
Latur, Maharashtra. (Brother-in-law)
4. Asma @ KLaturr Vasim Thengade,
Age : 30 Years, Occ. Household,
R/o. Malwati Road, Siddheswar Nagar,
Latur, Maharashtra. (Sister-in-law)
..Applicants

VERSUS

1. The State of Maharashtra,
Through Police Station Killari,
Latur.
2. Sow. Reshma Musin Thengade,
Age : 30 Years, Occ. Household,
R/o. At Post Nanand, Tq. Nilanga,
Dist. Latur, Maharashtra .. Respondents

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Shri. Gaurav L. Deshpande, Advocate for the applicants.

Shri. G. A. Kulkarni, A.P.P. for Respondent No.1 State.

Ms. Namita Thole, Advocate for Respondent No.2 (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ**

RESERVED ON : 08.01.2025
PRONOUNCED ON : 29.01.2025

JUDGMENT (PER ROHIT W. JOSHI, J):-

1. The applicants in the present matter have approached this Court invoking inherent jurisdiction under Section 482 of the Code of Criminal Procedure (for short, "Cr.PC.") initially praying to quash the First Information Report No.0005 of 2023 dated 6.1.2023 registered against them with police station Killari, District Latur and by way of amendment for quashing the proceeding bearing Regular Criminal Case No. 46 of 2023 pending before the learned Judicial Magistrate First Class AUSA, District Latur for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (for short, "IPC"). The informant is respondent No.2. The applicants are related to respondent No.2 as under :-

Applicant No.1 is husband, applicant No.2 is father-in-law, applicant No.3 is brother-in-law and applicant No.4- is sister-in-law. Marriage of respondent No.2 with applicant No.1 was solemnized somewhere in the year 2011. The couple is blessed with two children from the wedlock. As per the version of respondent No.2, in the First Information Report, for a period of around three years after the marriage till the birth of their girl child, the relations were cordial as in any normal family. She claims that thereafter applicant No.1- husband started raising doubt about her character. She alleges that

applicant No.1 used to beat her under influence of liquor and also that he would insist upon her to get a sum of Rs. 2,00,000/- from her parents for the purpose of purchasing tools and apparatus for starting plumbing business. It is alleged that in view of the said harassment and ill-treatment her parents and relatives had been to her matrimonial home to make her husband and in-laws understand that they should treat respondent No.2 properly and live happily. It is stated that three to four months after the said meeting, the behavior of in-laws was good and she was treated well. She, however, alleges that after the said period, the applicant nos.1 to 4 again started ill-treatment and asked her to bring Rs. 2,00,000/- from her parents for the aforesaid purpose. Respondent No.2 alleges that on 20.10.2019, when she was at her parental house, applicant No.1 came there under influence of liquor and again started beating and abusing her and had demanded Rs. 2,00,000/-. She alleges that when her parents had intervened he threatened that he would kill her if she does not bring the amount from her parents and further that he would not cohabit with her unless she brings the said amount of Rs. 2,00,000/-. She has further stated in the First Information Report that since her husband did not take her back from her parental home, she was constrained to lodge complaint with the Women Grievance Redressal Cell, Latur against all the applicants and since the applicants did not come forward for reconciliation, she had lodged the First Information

Report. The complaint before Women Grievance Redressal Cell is stated to be made on 11.11.2022. The First Information Report is lodged on 06.01.2023. As per the First Information Report, the last wrongful act is dated 20.10.2019. Drawing our attention to these dates, the learned Advocate for the applicants Mr. Gaurav Deshpande contends that the First Information Report deserves to be quashed on the ground that it is filed beyond the prescribed period of limitation. He thereafter contends that even on merits, respondent No.2 has failed to make out any case, the allegations are vague, general and omnibus in nature. He states that the marriage has been solemnized in the year 2011. Respondent No.2 has two children from the marriage and all of a sudden, has lodged First Information Report on 06.01.2023. He claims that, respondent No.2 has taken resort to criminal proceedings in order to settle matrimonial dispute with applicant No.1.

2. Learned A.P.P. Shri. G.A. Kulkarni, has strenuously argued that the offence under Section 498-A of IPC is a continuing offence and therefore, the First Information Report cannot be quashed on the ground of limitation. As regards merits, he contends that the allegations are clear and specific and veracity of the same can be adjudicated only at the time of trial. He would submit that for the present the allegations in the First Information Report will have to be

taken to be true and correct and accepted on its face value. Advocate Ms. Namita Thole, who is appointed to represent respondent No.2 advances submissions on similar lines to oppose the application.

3. Respondent No.2 to 4 are father-in-law, brother-in-law and sister-in-law of respondent No.2. We find that all the allegations in the First Information Report and other statements recorded under Section 161 of the Code of Criminal Procedure are against applicant No.1-husband. There is one omnibus statement in the First Information Report against applicant Nos. 2 to 4, stating that they had demanded Rs. 2,00,000/- along with applicant No.1 and had abused her, beaten her and did not offer food to her in order to coerce and pressurize her to fulfill the demand. These allegations are clearly general in nature. They are absolutely vague. The date, time or even tentative period of the alleged wrong on the part of applicant No.2 to 4 is not mentioned. Apart from this, specific act is not attributed to any of the applicant Nos. 2 to 4. The allegation, apart from being vague, general and unspecific, is also omnibus. The said allegation is clearly an attempt to implicate family members of the husband in matrimonial dispute inter-se between wife and husband. The present case offers another unfortunate example of wife resorting to over implication. The allegation against applicant Nos. 2 to 4 is absolutely meaningless and on the basis of such allegation it will not be just and

proper to force them to face the criminal prosecution. The application deserves to be allowed with respect to applicant Nos. 2 to 4.

4. As regards the applicant No.1, the learned Advocate for the applicants has only canvassed the point of limitation. The learned Advocate for the applicants has strenuously urged that, the First Information Report deserves to be quashed on the ground that it is filed beyond the prescribed period of limitation. He states that the sentence for offence punishable under Section 498-A is three years and therefore as per Section 468 (2)(c) the limitation for taking cognizance of the offence will be three years. Referring to the First Information Report, he states that the last alleged incident is dated 20.10.2019, the complaint to Women Grievance Redressal Cell made on 11.11.2022, the First Information Report is lodged on 06.01.2023 and charge sheet is filed on 22.01.2023. He submits that cognizance of the offences is taken after the prescribed period of limitation. He states that limitation of three years should be counted from 20.10.2019, which is last alleged incident of ill-treatment. He submits that even the complaint before the Women Grievance Redressal Cell is filed beyond the period of three years. The First Information Report is filed thereafter beyond the period of limitation. He, therefore, submits that filing of charge sheet and taking cognizance of the offence is also beyond prescribed period of limitation. Referring to

Section 468(1) he submits that since the provision is couched in negative terms, it has to be treated as absolutely mandatory. With respect to Section 473, he would submit that there is absolutely no explanation for extension of time in order to entertain the matter beyond the prescribed period of limitation and that in the facts of the case, it will not be in the interest of justice to entertain the matter beyond the prescribed period of limitation.

5. Per contra, the learned A.P.P. has referred to Section 472 of the Code of Criminal Procedure to contend that the offence under Section 498-A of IPC is a continuing offence and, therefore, fresh period of limitation begins to run every moment during which the offence continues. He also submits that cognizance can be taken beyond the prescribed period of limitation in view of Section 473. He argues that Section 468 has to be read in conjunction with Section 473 and that both these provisions are required to be interpreted harmoniously. As regards extension of time, he submits that in case of offence under Section 498-A it is always in the interest of justice to take cognizance of the matter filed beyond the prescribed period of limitation since the wife who is a victim of cruelty and harassment deserves sympathetic consideration. He contends that often victims of offence under Section 498-A do not immediately resort to lodging complaints/First Information Reports with a view to save the marriage. As regards

interpretation of Section 473, he states that even in the absence of any explanation for the delay, cognizance can be taken with respect to prosecution initiated after prescribed period of limitation in the interest of justice. He states that the two contingencies viz satisfaction with respect to explanation offer for delay and interest of justice are two separate considerations prescribed under Section 473 of the Code of Criminal Procedure for extension of period of limitation. He referred to word 'or' to contend that even if the delay is not explained, period can be extended in the interest of justice. Both the learned Advocates have placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of *Arun Vyas Vs. Anita Vyas reported in (1999)Criminal Law Journal 3479* and *Ramesh and other Vs. state of Tamil Nadu reported in (2005) AIR SCW 1319*.

6. Apart from this, the learned A.P.P has also placed reliance on judgment of Hon'ble Supreme Court in the matter of *Rupali Devi Vs. State of Uttar pradesh reported in AIR OnLine (2019) SC 394*.

7. Crime never dies is one of the basic principles of criminal law. In other words right of state to prosecute an offender is not lost with passage of time. Section 468 of the Cr. P. C. creates an exception to this general principle of law. It categorizes certain offences based on the punishment provided and fixes period of limitation for taking

cognizance of such offences. Limitation is prescribed for offences punishable with imprisonment up to three years. Section 498-A is an offence punishable with maximum sentence of three years. Section 468 of the Cr. P. C therefore, applies to Section 498-A of the IPC.

8. We accept the contention of learned A.PP that Section 468(1) of the Code of Criminal Procedure cannot be read in isolation and that it has to be interpreted harmoniously with Sections 472 and 473 therein. The said provision although couched in the negative term which implies that it is mandatory, will have to be read in conjunction with Section 473 of the Cr.PC which enables a Court to take cognizance of offence beyond the prescribed period of limitation. The period can be extended under Section 473 on two grounds i.e. satisfactory explanation for the delay or in the interest of justice. Since the provision uses the term 'or', period can be extended even if one of the conditions is fulfilled. Therefore, a conjoint reading of Section 468 and 473 from the Code will indicate that although the limitation is prescribed for taking cognizance of certain offences, time can be extended in cases where either the delay is properly explained or when it is in the interest of justice to take cognizance of the matter despite the same being barred by limitation. Section 468 of the Cr.PC is mandatory in nature in the sense that in case of delay, if proper explanation is not offered or the Court does not find that cognizance

should be taken in the interest of justice despite the delay then cognizance of the offence beyond the prescribed period of limitation will be barred.

9. As regards Section 472 of the Cr. P. C, contention of the learned A.P.P. that offence under Section 498-A of the IPC is a continuing wrong will have to be accepted, but only with a rider. Although the offence under Section 498-A of the IPC is a continuing wrong, it would not mean that limitation would continue to run perennially. The correct interpretation of the provision is provided in the matter of *Arun Vyas and another Vs. Anita Vyas (supra)* which states that in case of offence under Section 498-A, a new starting point of limitation is start on every occasion when the wrong is committed and the period of limitation needs to be computed from the last such wrong. We may profitably quote paragraph 13 of the said decision, which reads as under :-

“ The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional Chief Judicial Magistrate, she was forced to

leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under Sections 406 and 498-A from October 13, 1988 and ended on October 12, 1991. But the charge sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468(2)(c) Cr. P. C. ”

10. Thereafter, the Hon'ble Supreme Court has further stated in paragraph No. 14 that in complaints under Section 498-A the wife will invariably be oppressed, who is subjected to cruelty and, therefore, Section 473 of the Cr. P.C should be construed liberally in favour of wife. However, the Hon'ble Supreme Court has also cautioned that the words interest of justice employed in Section 473 of the Cr. P. C. cannot mean in the interest of prosecution and the true object of the provision is to advance the cause of justice by protecting the oppressed and punishing the offender. The Hon'ble Supreme Court has also referred to its earlier judgment in the matter of *Onkar Radha Manohari (Smt) Vs. Venka Venkata Reddy reported in 1993 AIR SCW 3595* that while dealing with Section 498-A of the Indian Penal Code, the Court should not only examine as to whether delay is properly explained, but also as to whether it is necessary to entertain a time barred matter in the interest of justice.

11. In the matter of *Ramesh and others Vs. State of Tamil Nadu*

(supra) the accused had raised a contention that the wife had left the matrimonial home on 02.10.1997 and no further act of cruelty continued thereafter. It was contended that the outer limit for taking cognizance of the offence expired on 03.10.2000 after a lapse of three years. The Hon'ble Supreme Court has followed the principle laid down in Arun Vyas and another Vs Anita Vyas (supra) to record that the last act of cruelty becomes starting point of limitation in the matter of offence under Section 498-A of the Indian Penal Code. It has also confirmed the view that cognizance of offence can be taken beyond prescribed period of limitation in either of the two contingencies viz delay being properly explained, or in the interest of justice. The Hon'ble Supreme Court has held in paragraph No.8 of the judgment that prosecution cannot be nullified at the threshold on the ground of limitation and normally the matter should be left to the discretion of the learned trial Court to decide as to whether cognizance of the offence should be taken after the limitation prescribed has expired.

12. As regards the judgment in the matter of Rupali Devi Vs. State of Uttar Pradesh AIR ONLINE (2019) SC 394 relied upon by the learned A.P.P., the principal dispute was with respect to territorial jurisdiction of a Court while dealing with offence under Section 498-A of the Indian Penal Code. The question was, when a wife is forced

to leave her matrimonial home and resides with her parents, the Court having jurisdiction over the place of residence of wife will have jurisdiction to take cognizance of the offence under Section 498-A of the Indian Penal Code will have the territorial jurisdiction or not. In that context, the Hon'ble Supreme Court has held in paragraph No. 14 of the judgment as under :-

14. "Cruelty" which is the crux of the offence under Section 498-A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498-A of the Indian Penal Code. The emotional distress or physiological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and

take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place. ”

13. These observations have been made in the context of territorial jurisdiction. The judgment does not deal with the aspect of limitation. Provisions of Sections 468, 472 and 473 of the Cr. PC did not fall for consideration in this case. As against this in the cases of *Arun Vyas and another Vs Anita Vyas (supra)* and *Ramesh and other Vs. state of Tamil Nadu (supra)*, the question of limitation was directly involved and the same is answered referring to the relevant statutory provisions. It is settled legal principle that judgments of the Courts have to be interpreted in the backdrop of facts of the particular case. Ratio of a case has to be understood and appreciated in the backdrop of the facts in which the judgment is delivered. The law laid down in the judgment cannot be divorced from the facts of the case in which it is delivered. A judgment cannot be interpreted like a statute. It cannot be applied uniformly every where like Euclid's theorems of geometry. Therefore, while dealing with aforesaid three judgments cited during the course of hearing, we are of the considered opinion that the ratio laid down in the matters of Arun

Vyas and Ramesh which directly deal with the question of limitation will have to be accepted. The judgment in the matter of Rupali Devi is relating to territorial jurisdiction of a Court to deal with offence under Section 498-A of the IPC.

14. In the light of above, we are of the opinion that limitation for offence punishable under Section 498-A of the IPC shall commence from the last act of cruelty. Offence under Section 498-A of the IPC is a continuing offence implies that each act of cruelty would offer new starting point of limitation. Limitation for prosecution under Section 498-A does not continue for indefinite period. Such interpretation will render Section 468 of the Cr. P.C. nugatory or otiose for the purpose of Section 498-A of the Indian Penal Code which does not appear to be the intention of legislature. Had there been intention to exclude Section 498-A of the IPC from the sweep of Section 468 of the Cr. P.C express provision could have been made for the said purpose.

15. We have noticed that the last incident narrated in the First Information Report is dated 20.10.2019. Within a period of few months thereafter i.e. from March 2020 lock-down of Pandemic of Covid-19 was imposed. Taking note of the situation, the Hon'ble Supreme Court has extended the limitation for filing of cases from time to time finally up to June 2022. We may take judicial note of the fact that from March 2020 till

about second wave of Covid-19 pandemic which was April/May 2021, the situation was very grim, thereafter gradually situation got eased out. However, as stated above, limitation for filing all sort of the cases was extended by Hon'ble Supreme Court up to June 2022. Having regard to the facts of the present case, i.e. allegation by the wife regarding illtreatment including abuses and physical act of beating on the part of the husband for demand of dowry, the Covid-19 situation and the principles laid down by the Hon'ble Supreme Court, we are of the opinion that the case is made out for extension of time for taking cognizance of the offence under Section 473 of the Code of Criminal Procedure. We are of the opinion that it would be in the interest of justice that cognizance of the matter should be taken although the same is barred by limitation. Normally we would have remitted the matter to learned Magistrate to decide the aspect of the limitation, however, having regard to the aforesaid facts, we are of the opinion that it will not be necessary to remit the matter back to the learned Magistrate. We should also mention that the last alleged incident is dated 20.10.2019 and respondent No.2 had approached the Women Grievance Redressal Cell by filing complaint on 11.11.2022 and had thereafter lodged the First Information Report on 06.01.2023. The charge sheet is filed on 29.01.2023. Thus, the delay that is caused in the matter is less than one month if we consider the date of approaching Women Grievance Redressal Cell and around two and half months when we consider the date of lodging of First Information Report. Even if we consider the date of charge sheet, the delay is only three months and ten days. Having regard to the extent of delay and Covid-19 situation coupled with principles laid down by the

Hon'ble Supreme Court, we are of the opinion that the matter need not be remitted to the learned Magistrate to decide the issue of limitation. The applicant No.1 has failed to make out any case for interference. We do not deem it appropriate to quash the First Information Report against the applicant No.1.

16. We clarify that observations made in the present judgment are only for the purpose of deciding as to whether case for quashing of First Information Report has been made out or not within the narrow scope of Section 482 of the Cr.PC. We have not observed anything with respect to veracity or correctness of the allegations levelled against applicant No.1. The same shall be decided by the learned Magistrate in accordance with law. Hence, the following order :-

ORDER

- (i) The application is rejected as against the applicant No.1 Musin Babulal Thengade.
- (ii) The application is allowed with respect to applicant Nos. 2 to 4 namely applicant No.2 Babulal Allauddin Thengade, applicant No.3 Vasim Babulal Thengade, applicant No.4 Asma @ Klaturr Vasim Thengade and First Information Report No. 0005 of 2023 dated 6.1.2023 registered against them with police station Killari, District Latur and Regular Criminal Case No. 46 of 2023 pending before learned Judicial Magistrate, First Class, Ausa, District Latur for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code are quashed against them.

- (iii) The fee payable to the learned Advocate appointed for represent respondent No.2 is quantified at Rs. 7,000/- (Rupees Seven Thousand only)

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni