



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 372 OF 2006

The State of Maharashtra
Through P.S.O., Azadnagar,
Police Station, Dhule.

... Appellant

Versus

1. Sk. Farid Sk. Rafik,
Age 24 years,
2. Sk. Rafik Sk. Sandu,
Age 51 years, Occupation Business,
3. Ambiyabee Rafik Shaikh,
Age 43 years, Occupation Household,
4. Faruk Sk. Rafik Sk.
Age 26 years,
5. Sk. Faim Sk. Rafik,
Age 19 years, Occupation Education,

All R/o. Jaishankar Colony,
Behind House of Dr. Kabir,
80 Feet Road, Dhule.

... Respondents
(Orig. Accused)

.....

Mr. S. S. Dande, APP for the Appellant-State.
Mr. Akram Inamdar h/f Mr. S. S. Kazi, Advocate for Respondents.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.08.2025
Pronounced on : 14.08.2025

JUDGMENT :

1. This is a State Appeal, whereby exception has been taken to the judgment and order of acquittal dated 18.01.2006, by which learned J.M.F.C., Dhule acquitted present respondents from charges under Section 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code [IPC].

2. Charge was framed and trial was conducted against present respondents on the premise that, PW2-complainant was married to accused no.1 in 1998 and she started residing with in-laws i.e. accused. After six months or so, accused persons put up a demand of Rs.50,000/- for motor business and on such count, there was maltreatment and harassment which she reported to her parents. On 02.01.2001, in above backdrop, as demand was not met, it is alleged that accused persons beat PW2-complainant. She lodged report, resulting into registration of crime.

On completion of investigation, accused were chargesheeted and tried before learned J.M.F.C., Dhule vide R.C.C. No. 191 of 2001 for above charge. In trial court, case of prosecution is based on the evidence of in all six witnesses. After appreciating the evidence, learned trial court refused to accept the prosecution case and acquitted the accused.

Feeling aggrieved by the same, State has come up in appeal.

3. Learned APP would take this Court through the evidence of complainant PW2, her parents as well as maternal uncle and would point out that they are all consistent regarding demand and about abuses and beating. He would point out that PW6 Jainul is the star witness, to whom PW2 immediately approached after being beaten mercilessly by accused persons. That, prosecution had also examined PW1 Medical Officer on the point of injuries suffered due to beating at the hands of accused. Thus, according to learned APP, there is overwhelming and clinching evidence in support of charge.

4. Learned APP would take serious exception to the trial court judgment on the point of it taking recourse to the findings in a civil suit and applying the same while according acquittal. On this count, he seeks reliance on the judgment of Hon'ble Apex Court in the case of *Kishan Singh (Dead) through LRs v. Gurpal Singh and others* [(2010) 8 SCC 775].

5. Learned APP also pointed out that, non-examination of Investigating Officer itself was not fatal, more particularly, according to him, when there is evidence of victim complainant finding support from evidence of parents.

On above both grounds, he urges indulgence at the hands of this Court for allowing the appeal.

6. Learned counsel for original accused would support the judgment and findings of trial court. According to him, there were general and omnibus allegations. Secondly, there was delay in lodging report and which is primarily admitted by witnesses to be after due deliberation and consultation. He would point out that there is correct appreciation of evidence as well as law and would also submit that, appellate court cannot alter the judgment by taking different view.

7. Evidence of complainant is at Exhibit 21. There is evidence of her parents as PW3 and PW4 at Exhibits 23 and 25 respectively. PW5 is the grandfather and PW6 is an acquaintance.

8. Re-appreciated and re-analyzed their evidence. Relations are not disputed. According to complainant PW2, six months prior to 2001 accused persons demanded Rs.50,000/- for motor business, and due to poverty, her parents could not meet the demand. Accused persons abused her, they beat her and even suspected her character. These are the fundamental allegations. However, as stated above, as

many as five accused are facing trial. She has admitted in cross that accused no.5 was then barely 19 years of age and was taking education at Nagaon. Again, there is substance in the argument put forth by learned counsel for respondents that, allegations are general and omnibus in nature and specific roles are not crystallized or defined. She has reported beating to her on 02.01.2002 by kicks and fist blows and she claims to have left the house and went to house of PW6.

9. PW6, who is examined at Exhibit 30, claims that in the morning of 02.01.2001, PW2 came along with her brother and he found her in frightened condition and borrowed money from him to pay the fare. He claims that, he advised her to take rest and thereafter she told him that she was beaten. Again, this witness has not stated about being informed regarding beating by all accused, or about demand of Rs.50,000/- being raised and in such backdrop she being beaten. This witness claims that he accordingly informed her parents on telephone and they came and took her away. As pointed out, there is no report or complaint on 02.01.2001. Rather complaint is lodged on 03.01.2001 without assigning any reason for the delay. Witnesses, including parents, have admitted that after discussion and deliberation, report has been lodged.

10. Parents PW3 and PW4 are also examined. According to PW3-mother, her daughter came for delivery and went back to her matrimonial house. She claims that her daughter told about accused demanding Rs.50,000/- for vehicle business and beat and abused her. This witness stated that four years prior to 02.01.2001, there was beating to her daughter and they had learnt about it on telephone. PW4 father stated that after marriage, for some days, accused persons behaved properly with his daughter. Then there was demand of Rs.50,000/- and they used to beat his daughter and used to send her to maternal home. Such is not the version of either daughter PW2 or even his own wife PW3.

11. PW5 is the grandfather, and he deposed that after one to two years of her marriage, his grand daughter told that behaviour of accused was not proper and that accused no.1 did no work and even threatened to kill her. He also stated about demand of money, but how much demand was raised has not been stated by him and he admits to this extent in the examination-in-chief itself. He has not stated about alleged occurrence dated 02.01.2001.

12. Therefore, what is emerging on evaluation of evidence of PW2, PW3, PW4 and PW5 is that, marriage is of 1998. Witnesses are not consistent since when demand was raised. Allegations of beating are attributed to all accused without specifying the role. General allegations are made that she was beaten by kicks and fist blows. Alleged beating is of 2001 i.e. after three years of marriage. None of the witnesses speak about beating earlier to January 2001. Only one instance of 02.01.2001 is quoted, that too, wherein there are general and omnibus allegations. Law is fairly settled that, Section 498-A contemplates persistence and continuous physical and mental harassment. Here, it is not so.

13. Learned APP has taken serious exception to the approach of learned trial Judge in considering judgment of learned Civil Judge Senior Division in Regular Civil Suit No. 10 of 2001 which was at the instance husband seeking decree of perpetual injunction for restitution of conjugal rights which was apparently decreed in favour of husband. Precise submission of learned APP is that, it was not open for learned trial court dealing with charge under Sections 498-A, 323 and other sections of IPC to take recourse to or rely on the judgment delivered by Civil Court, and he has also sought reliance on above said ruling.

14. Perused the judgment so relied and referred, i.e. **Kishan Singh** (supra), wherein proceedings under Section 482 Cr.P.C. for quashment of FIR were under consideration and Hon'ble Apex Court, after dealing with several other judicial pronouncements, in para 18 held as under :

“18. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872 dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.”

15. It would be worthwhile to deal with the judgment of Hon'ble Apex Court in the case of **Syed Askari Hadi Ali Augustine Imam and**

Ors. vs. State (Delhi Admn.) and Ors. MANU/SC/0343/2009 [Criminal Appeal No. 416 of 2009 (arising out of SLP (Crl.) No. 5791 of 2005)]. Even in this judgment, issue about precedents of criminal proceedings over civil proceedings was under consideration. The question to that regard which arose in the case of ***K. G. Premshanker v. Inspector of Police and another***, MANU/SC/0771/2002 was quoted and the same is borrowed and reproduced hereunder :

“30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence

Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is -- whether judgment, order or decree is relevant, if relevant -- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

16. Similarly, in para 12 of the said judgment ***Syed Askari*** (supra), on a citation relied by learned counsel therein in the case of ***Surinder Kumar and others v. Gian Chand and others*** MANU/SC/0024/1957, the scope and nature of Section 41 of Indian Evidence Act 1872 was dealt and discussed. Relevant portion of para 12 is reproduced hereunder:

“Section 41 of the Indian Evidence Act reads as under:

*41 - Relevancy of certain judgments in probate, etc., jurisdiction. -- A final judgment, order or decree of a competent Court, in the exercise of probate, **matrimonial admiralty** or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof-*

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued, to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

It speaks about a judgment. Section 41 of the Evidence Act would become applicable only when a final judgment is rendered. Rendition of a final judgment which would be binding on the whole world being

conclusive in nature shall take a long time. As and when a judgment is rendered in one proceeding subject to the admissibility thereof keeping in view Section 43 of the Evidence Act may be produced in another proceeding. It is, however, beyond any cavil that a judgment rendered by a probate court is a judgment in rem. It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding.”

17. Thus, in the considered opinion of this Court, from above judicial precedent, it is clear that **except in provisions of Section 41 to 43, previous proceedings and judgments therein may not be applicable.** Above quoted Section 41 clearly contemplates final judgment, order or decree of a competent court in exercise of probate, **matrimonial admiralty** or insolvency jurisdiction to be conclusive proof. What is required is final judgment. Here also, learned Civil Court has decreed the suit of husband accused herein seeking perpetual injunction for restitution of conjugal rights. Therefore, even in the considered opinion of this Court, there is no hurdle for taking recourse to civil proceedings when they are between same parties. Even otherwise, independent of that, here, on merits also, case for Section 498-A has not been made out.

18. As regards to commission of offence under Section 323 IPC is concerned, though there is evidence of PW1 doctor, for above stated reasons that, which of the accused played what role, and allegations being in sweeping manner, coupled with the aspect of delayed FIR, there is possibility of false implication. For said reasons, even charge of Section 323 IPC is not proved beyond reasonable doubt. Even as regards to other charges of commission of offence under Sections 3 and 4 of Dowry Prohibition Act are concerned, there is weak or no evidence.

19. Bearing in mind the law while dealing with appeal against acquittal and when there is no patent perversity brought to the notice of this Court, this Court refrains from interfering in the order impugned. Hence, the following order :

ORDER

The Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]