



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1796 OF 2024

Varsha Avinash Chavhan @
Varsha Dadasaheb Chatale

.. Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Nagar Taluka Police Station,
Tq. And Dist. Ahmednagar.

2. Rohini w/o Avinash Chavhan

.. Respondents

...

WITH

CRIMINAL APPLICATION 1797 OF 2024

1. Ashok s/o Ramlal Chavhan
2. Sangita w/o Ashok Chavhan
3. Ankit s/o Ashok Chavhan
4. Ramlal s/o Yadavrao Chavhan

.. Applicants

Versus

1. The State of Maharashtra
Through Police Inspector,
Nagar Taluka Police Station,
Tq. And Dist. Ahmednagar.

2. Rohini w/o Avinash Chavhan

.. Respondents

...

Ms. Pratiksha C. Kale, Advocate for the applicants in both the applications.

Mr. A. M. Phule, APP for respondent No.1/State in both the applications.

Mr. N. C. Garud, Advocate for respondent No.2 in both the applications.

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**CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.**

DATE : 20 AUGUST 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present applications have been filed initially for quashing the FIR vide Crime No.157 of 2024 dated 28.02.2024 registered with Nagar Taluka Police Station, District Ahmednagar and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.1110 of 2024 pending before the learned Judicial Magistrate First Class, Ahmednagar for the offences punishable under Sections 498-A, 494, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Ms. Pratiksha C. Kale for the applicants, learned APP Mr. A. M. Phule for respondent No.1/State and learned Advocate Mr. N. C. Garud for respondent No.2.

3. Learned Advocate for the applicants submits that the applicant in Criminal Application No.1796 of 2024 is stated to be the second wife of original accused No.1. She cannot come within the definition of relative of the husband as contemplated under Section 498-A of Indian Penal Code. Further, the prosecution has also invoked Section 494 of Indian Penal Code. In that case also the alleged second wife cannot be made as an accused. The said Section is non cognizable and as per Section 198 of the Code of Criminal Procedure, the cognizance of such offence cannot be taken except upon a complaint made by same person aggrieved by the offence. The other applicants i.e. applicants in Criminal

Application No.1797 of 2024 are the brother-in-law and applicant No.4 is the father-in-law of respondent No.2. Applicant No.2 is the wife of applicant No.1 and applicant No.3 is the son of applicant Nos.1 and 2.. If we peruse the allegations in the FIR, she states that she was allegedly driven out of the house in 2007 and thereafter, she started residing with her parents. The FIR has been lodged on 28.02.2024. Therefore, for offences under Sections 498-A, 323, 504, 506 of Indian Penal Code, the FIR is beyond the period of limitation. In the FIR it is pleaded that in 2013, original accused No.1 performed marriage with applicant in Criminal Application No.1796 of 2024 and the original accused No.1 and alleged second wife have begotten son on 05.05.2014. Still after so many years i.e. after about 10 years, the present FIR has been lodged which is nothing but with ulterior motive. In respect of Section 494 of Indian Penal Code, the allegation against the applicants are that they have helped original accused No.1 for marriage with the alleged second wife. However, in the entire charge-sheet there is no material to support these allegations. Under such circumstance, the trial as against all the applicants would be a futile exercise. No offence even at the *prima facie* stage has been made out and, therefore, both the applications deserve to be allowed.

4. The applications have been resisted by learned APP as well as learned Advocate for respondent No.2. It is stated that respondent No.2

had made specific allegations in the FIR against all the applicants and in Criminal Miscellaneous Application No.146 of 2015 filed with Judicial Magistrate First Class, Ahmednagar under Section 12 of Protection of Women from Domestic Violence Act, 2005, it has been held that the respondents therein i.e. including the present applicant Nos.1, 2 and 4 had committed domestic violence against respondent No.2. There is evidence regarding original accused No.1 marrying with the applicant in Criminal Application No.1796 of 2024, as they have also begotten son on 05.05.2014, thereby *prima facie* offence under Section 494 of Indian Penal Code is also attracted. The investigation for the offence under Section 494 of Indian Penal Code can be made in a matter where offence under Section 498-A of Indian Penal Code is alleged. Taking into consideration Section 498-A and 494 of Indian Penal Code, there will not be any question of limitation in view of Section 468(3) of the Code of Criminal Procedure, which provides that the period of limitation in which offences may be tried together should be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. Here, the most severe punishment is under Section 494 of Indian Penal Code i.e. imprisonment for either description for a term, which may extend upto seven years and, therefore, there is no bar under Section 468 of the Code of Criminal Procedure. Since the charge-sheet has been produced, let there be

trial.

5. At the outset, certainly, the legal position broadly that can be stated is that the offence under Section 494 of Indian Penal Code though cognizable in nature, if it is along with Section 498-A of Indian Penal Code, then in spite of there being a bar under Section 198 of the Code of Criminal Procedure, yet there can be investigation in respect of the same by the police officer. This position of law has been cleared in ***Ushaben vs. Kishorbhai Chunilal Talpada and Others, [2012 ALL MR (Cri) 2088 (S.C.)]***, and the decision of the Single Bench of this Court in ***Hiraben w/o. Ganesh Choudhari Vs. The State of Maharashtra & Ors, [2015 ALL MR Cri. 2380]***. However, here, in this case, the question is whether the informant, who had knowledge about the alleged second marriage when she had filed Criminal Miscellaneous Application No.146 of 2015 on 31.01.2015, could have kept quiet till 28.02.2024 to lodge the report either for Section 498-A or Section 494 of Indian Penal Code or together. Perusal of the judgment in Criminal Miscellaneous Application No.146 of 2015 would show that respondent No.2 had pleaded that recently that means just prior to 31.01.2015, she had come to know that accused No.1 i.e. husband has performed second marriage, then in the present FIR there ought to have been explanation for the delay. Merely because there is no limitation independently for lodging the complaint under Section 2(d) of the Code of Criminal Procedure for the offence

punishable under Section 494 of Indian Penal Code, respondent No.2 cannot utilize the same for making allegations in respect of Section 498-A of Indian Penal Code, which were time barred. As per the contents of the FIR, the informant and her daughter were driven out of the house in 2007 and since then she had taken the shelter with her parents. Intentionally, she has not stated when she filed the Criminal Miscellaneous Application No.146 of 2015 under the Domestic Violence proceedings, but then refers that in the same matter the maintenance was granted in 2018 to herself and her daughter. The second question would then be that since 2018 then why she waited for lodging the FIR till 28.02.2024. No other incident has taken place after 2018 till 28.02.2024 which will prompt her to lodge the FIR. There are no acts of harassment/cruelty committed by any of the applicants. Even the FIR states that the occurrence of offence is between 24.04.2002 to 24.04.2007. The marriage between accused No.1 and alleged second wife cannot be taken as continuous act of cruelty, because there should be some instances with which then there was confrontation between the applicants and respondent No.2. No overt act is attributed to the present applicants and secondly, the alleged second wife i.e. the applicant in Criminal Application No.1796 of 2024 cannot be termed as 'relative of the husband' for bringing her under the ambit of Section 498-A of Indian Penal Code. We would like to reproduce Section 494 of Indian Penal

Code, which reads thus :-

494. Marrying again during lifetime of husband or wife. —

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, perusal of this provision would show that it is restricted to the person, who marries during the lifetime of husband or wife and not to the person with whom the marriage had taken place. Another fact to be noted is that in the entire charge-sheet there is no evidence to show that the marriage has been performed between accused No.1 and said alleged second wife. No doubt there is birth certificate of the son and also some documents regarding acquisition of property by said applicant and also gift deed by applicant No.4 in favour of the son of alleged second wife and stating that he is the son of his son, yet Section 494 of Indian Penal Code requires the proof that the marriage rituals have been undergone or there was another mode of so called marriage of valid marriage. On any ground i.e. since there is inordinate delay in lodging the FIR for the offence under Section 494 of Indian Penal Code, though clearly the note of the same was with respondent No.2 on 31.01.2015 and as regards offence under Section 498-A of Indian Penal Code, she was driven out of the house in 2007, the FIR on 28.02.2024 would be

barred by Section 468 of the Code of Criminal Procedure. Certainly, it would be an abuse of process of law, if the applicants are asked to face the trial. Hence, the following order :-

ORDER

- I) Both the applications stand allowed.

- II) The FIR vide Crime No.157 of 2024 dated 28.02.2024 registered with Nagar Taluka Police Station, District Ahmednagar as well as the proceedings in Regular Criminal Case No.1110 of 2024 pending before the learned Judicial Magistrate First Class, Ahmednagar for the offences punishable under Sections 498-A, 494, 323, 504, 506 read with Section 34 of Indian Penal Code, stand quashed and set aside as against the present applicants in both the applications.

[SUSHIL M. GHODESWAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm