



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2220 OF 2023

Bhagyashri Raju Pawar
(As per FIR second wife of
Husband of Informant),
Age-33 years, Occu:Service,
R/o-Savitribai Phule Nagar,
Buldhana, Taluka and District-
Buldhana.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Police Station, City Chowk,
Aurangabad,
- 2) Swati W/o Sadanand Kshirsagar,
Age-27 years, Occu:Household,
R/o-New Naralibag, Near Sanskrutik
Mandal, Aurangabad, Taluka and
District-Aurangabad.

...RESPONDENTS

...
Mr. Ravindra V. Gore Advocate for Applicant.
Mr. A.R. Kale, A.P.P. for Respondent No.1 – State.
Mr. R.P. Phatke Advocate for Respondent No.2.
...

CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE : 18th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 402 of 2022 registered with City Chowk Police Station, Aurangabad, District-Aurangabad on 26th December 2022, and by way of amendment for quashing the proceedings in R.C.C. No. 2098 of 2023, pending before the learned Judicial Magistrate First Class, Aurangabad, for the offence punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.
2. Heard learned Advocate Mr. Gore for the applicant, learned APP Mr. Kale for respondent No.1 and learned Advocate Mr. Phatke for respondent No.2.
3. Learned Advocate appearing for the applicant submits that the present applicant has been arrayed as accused No.2 in the FIR as well as in the charge-sheet. She is not related to the husband, however, in the FIR and the entire charge-sheet, applicant has been stated as the second wife of the husband. The second wife or the girlfriend cannot be considered as a

“relative of husband” for the purposes of prosecution under Section 498-A of the Indian Penal Code. There is no evidence brought on record to show that the present applicant was staying with the husband of respondent No.2 as wife. Though in the FIR, respondent No.2 has stated that she had seen the photographs and she had produced those photographs on record, yet at the most the applicant would be staying with the husband, which may be in the form of live-in-relationship and this fact has been stated even by the present applicant in her statement before the police. The present applicant and original accused No.1 have a child, but by no stretch of imagination it can be stated that the present applicant had subjected the informant with cruelty. Learned Advocate relies on the decision in *Dechamma I.M. @ Dechamma Koushik vs. the State of Karnataka and another, Criminal Application No. -- of 2024, (Arising out of SLP (Cri.) No.3421 of 2022)*, decided by the Hon’ble Apex Court on 4th December 2024, wherein the decision in *U. Suvetha vs. State by Inspector of Police and another, (2009) 6 SCC 757* was relied upon and then it has been observed in Paragraph Nos. 8, 9 and 10 as under:-

“8. This Court, in the case of U. Suvetha (supra), had an occasion to consider a question as to whether the girlfriend or

a woman with whom a man has had romantic or sexual relations outside of marriage would be a "relative of the husband" for the purposes of prosecution under Section 498A of IPC.

9. This Court, after considering the earlier judgments of this Court and the dictionary meaning of a relative, observed thus:-

"18. By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise."

10. It could thus be seen that this Court has, in unequivocal terms, held that a girlfriend or even a woman with whom a man has had romantic or sexual relations outside of marriage could not be construed to be a relative."

4. Learned APP as well as learned Advocate appearing for respondent No.2 have strongly opposed the application and submitted that there is evidence produced on record, especially the invitation card for celebrating the birth day of the son of the applicant and original accused No.1. The present applicant has posed herself as the wife of original accused No.1. When the applicant was residing with original accused No.1 as a wife, the informant had made an inquiry with her and at that time the applicant had abused the informant and given threats on phone.

Because of the present applicant the marital life of the informant has been ruined and that amounts to cruelty.

5. Learned Advocate for respondent No.2 relies on the decision in ***Reema Aggrawal vs. Anupam and others, (2004) 3 SCC 199***, wherein it is held that the concept of marriage to constitute the relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an anathema when the question of curbing a social evil such as causing harassment or cruelty to the wife for dowry is concerned. Learned Advocate for respondent No.2 also relies on the Single Bench decision of Hon'ble Kerala High Court in ***John Idiculla and another vs. State of Kerala and another, 2005 Cri. L.J. 2935***, wherein it has been held that the second wife of husband who married her during subsistence of his earlier legal marriage can be treated as relative of the husband for the purposes of Section 498-A of the Indian Penal Code.

6. At the outset, we would like to say the Judgment of the Hon'ble Single Bench of the Hon'ble Kerala High Court in ***John Idiculla and another vs. State of Kerala and another***, (supra) is

prior to the decision in *U. Suvetha vs. State by Inspector of Police and another*, (supra) by the Hon'ble Supreme Court. In the said matter, the offence alleged was not only under Section 498-A but also under Section 494 of the Indian Penal Code. Here, neither the said Section has been invoked nor there is evidence under Section 494 of the Indian Penal Code. The statement of the present applicant taken by the investigating officer is not admissible at all in the eyes of law. But even if we consider it at this prima facie stage, it states that the present applicant is staying in live-in-relationship voluntarily with original accused No.1 and they have a child born out of the said relationship. That means, the present applicant can be said to be covered under 'romantic or sexual relations outside of marriage' as stated in *Dechamma I.M. @ Dechamma Koushik vs. the State of Karnataka and another*, (supra) and *U. Suvetha vs. State by Inspector of Police and another*, (supra). In *U. Suvetha vs. State by Inspector of Police and another*, (supra), even the word 'concubine' has been used. There is absolutely no evidence collected on the point, whether the present applicant and original accused No.1 had ever undergone the rituals of marriage and the said ceremony was attended by anybody. The birth certificate of the child states the name of the present applicant

as mother and original accused as father of the child, but that does not make the present applicant as 'relative of husband'.

7. The facts in *Reema Aggrawal vs. Anupam and others*, (supra) were different. The appellant therein was admitted in the hospital after consuming poisonous substance. She then had stated that she was married to respondent No.1 and after the marriage she was harassed by husband and his relatives. It was disclosed that it was the second marriage of both i.e. the appellant therein as well as respondent No.1. The defence was taken that the appellant i.e. the lady/informant though shown as legally wedded wife yet, actually the said marriage of respondent No.1 with the informant was during the life time of wife of respondent No.1 i.e. first marriage. In that context the observations were made and it has been specifically observed that it was not brought on record, as to what happened to the first marriage of respondent No.1. In that context it was held that liberal interpretation should be given to the word 'husband' and 'wife'. Here, there is absolutely no evidence regarding the marriage between the present applicant and original accused No.1 and therefore, in view of the decision in *U. Suvetha vs. State by Inspector of Police and another*, (supra) and

Dechamma I.M. @ Dechamma Koushik vs. the State of Karnataka and another, (supra), it would be an abuse of process of law if the applicant is asked to face the trial. Hence, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No. 2098 of 2023, pending before the learned Judicial Magistrate First Class, Aurangabad, for the offence punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, arising out of the the First Information Report vide Crime No. 402 of 2022 registered with City Chowk Police Station, Aurangabad, District-Aurangabad on 26th December 2022, stands quashed and set aside as against applicant - Bhagyashri Raju Pawar.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25