



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

CRIMINAL APPLICATION NO.3622 OF 2023

Jyoti Sharad Mahire,
Age-40 years, occu:Homemaker,
R/o-Kharjai, Taluka-Chalisgaon,
District-Jalgaon.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Officer In-charge,
Police Station, Shillegaon,
District-Aurangabad,
- 2) Alka Gokul Borkar,
Age-40 years, Occu:Homemaker,
R/o-Mahebubkheda,
Taluka-Gangapur, Dist-Aurangabad.

...RESPONDENTS

...
Mr. Sudarshan J. Salunke Advocate for Applicant.
Mr. A.D. Wange, A.P.P. for Respondent No.1.
Mr. Rameez M. Shaikh Advocate for Respondent No.2.
...

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

DATE : 12th FEBRUARY, 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.249 of 2023, registered with Police Station, Shillegaon, District-Aurangabad, dated 30th July 2023, and by way of amendment for quashing the proceedings in R.C.C. No.580 of 2023, pending before the learned Judicial Magistrate First Class, Gangapur, District-Aurangabad, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Salunke for the applicants, learned APP Mr. Wange for respondent No.1 and learned Advocate Mr. Shaikh for respondent No.2.

3. With the help of learned Advocate of both the sides, we have gone through the FIR and the entire charge-sheet. In the FIR, it is alleged that original accused No.1 had performed marriage with the present applicant. However, it is to be noted that date of marriage or approximate year has not been given. Though in the FIR, provisions of Section 494 of the Indian Penal Code were added, but there is no evidence that has been collected which would show that marriage had taken place between original accused No.1 and the present applicant. There

is nothing in the charge-sheet which would disclose the relationship between accused No.1 husband and the present applicant. At the time of filing of the charge-sheet, Section 494 of the Indian Penal Code appears to have been dropped. In view of this, learned Judicial Magistrate First Class, ought not to have taken cognizance of the offence for the offence punishable under Section 498-A of the Indian Penal Code against the present applicant. It is now a settled position of law that a person who is not related to the husband or even the husband's girl friend or the lady with whom he had alleged illicit relations, cannot be added as an accused under Section 498-A of the Indian Penal Code. This basic principle has not been considered by the learned Judicial Magistrate First Class, Court No.4, Gangapur, District-Aurangabad while passing the order dated 25th October 2023. He went on to observe that the report prima facie shows that the allegations are well founded against the accused. He failed to consider the relationship and the allegations. Therefore, as against the present applicant, the order dated 25th October 2023 is not sustainable. The order of issuing process is a serious business and cannot be taken without application of mind. However, now a days the trial Courts are not paying attention to the ingredients of the offence and the facts and therefore, this

Court is required to exercise its powers under Section 482 of the Code of Criminal Procedure. We, therefore, proceed to pass following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No.580 of 2023, pending before the learned Judicial Magistrate First Class, Gangapur, District-Aurangabad, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, arising out of the First Information Report vide Crime No.249 of 2023, dated 30th July 2023, registered with Police Station, Shillegaon, District-Aurangabad, stands quashed and set aside as against applicant – Jyoti Sharad Mahire.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB25