



Cri. Revn. Appln. No. 266/2000

1

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO. 266 OF 2000**

Sopan @ Dnyandeo Maruti Bawadkar,  
Age 36 years, Occu. Agri.,  
R/o. Sitpur, Tq. Karjat,  
Dist. Ahmednagar.

**....Petitioner.  
(Ori.Accused/Appellant)**

**Versus**

The State of Maharashtra

**....Respondent.**

Mr. B.P. Suryawanshi h/f. Mr. M.Y. Deshmukh, Advocate for  
petitioner.

Mr. S.N. Kendre, APP for State.

**CORAM : T. V. NALAWADE, J.  
Reserved on : 22nd October 2012.  
Declared on : 5th November 2012.**

**JUDGMENT :**

1. The revision is filed to challenge the judgment and order of Judicial Magistrate, First Class, Karjat, District Ahmednagar, delivered in R.C.C. No. 279/1986. The petitioner is convicted and sentenced for the offence punishable under section 498-A of Indian Penal Code. This decision is confirmed by the Sessions Court, Ahmednagar in Criminal Appeal No. 43/1995. Both

the sides are heard. This Court has perused the original record.

2. The original complainant Nandabai is the wife of petitioner. She was given in marriage to the petitioner in the year 1981 or 1982. It is her case that the husband used to ask her to give divorce as he wanted to marry second wife. It is her case that the husband was demanding Rs. 5000/- and one tola gold from her parents. It is her case that as these demands were not met with, the husband used to give her beating and ultimately in March 1986 due to aforesaid reasons, she was driven out of matrimonial house by the petitioner, husband. It is her case that in May 1986, the husband married second wife. The second wife was also made accused in this case. The in-laws were also made accused. On the basis of report given on 17.11.1986, crime was registered in Karjat Police Station for offences punishable under sections 498-A, 494 and 34 of I.P.C.

3. During investigation, police recorded statements of relatives of wife and filed the chargesheet for aforesaid offences. For proving the offences, prosecution examined four witnesses before J.M.F.C. The J.M.F.C. has believed all the witnesses and held that there was 'cruelty' as defined under section 498 of I.P.C.

4. The complainant Nandabai (PW 1) has given evidence that the illtreatment was started to her after one and half months of the marriage. She has given evidence that her husband and her in-laws used to give beating to her. She has given evidence that they used to ask her to bring Rs.5000/- and one tola gold ring from her parents. She has deposed that as her parents are poor, they could not meet this demand. She has described the illtreatment given to her by saying that the accused used to give beating to her, they used to starve her and they used to harass her. She has given evidence that accused No. 1 husband, then married second wife. As there was the illtreatment, she gave report. The report at Exh. 31 is proved in her evidence. It appears that the English version of deposition is not correct as the translation is not correctly made. This Court has perused the Marathi versions.

5. It cannot be said that the version given in the Court by wife is fully consistent with her previous version in F.I.R. She has admitted during cross examination that there was the cohabitation of hardly two years. If the marriage had taken place in the year 1981 or 1982, there was cohabitation up to the year

1984. The F.I.R. was given on 17.11.1986. Though it is specifically contended that she was driven out of matrimonial house in March 1986, substantive evidence is not consistent with this allegation made in F.I.R. In the cross examination, complainant has admitted that she had filed maintenance proceeding against the husband. A copy of such proceeding is not produced on the record and she could not say as to whether the proceeding was filed about 8-10 years prior to the date of deposition. The deposition was given on 4.3.1995. These admissions of the complainant create probability that she was living separate from husband from 1984 and she gave report in 1986 and probably after learning about the second marriage of the husband. Her evidence does not show that she had ever disclosed about illtreatment to her parents or the parents had come to her matrimonial house and they had tried to convince the husband.

6. Kerba (PW 2), the father of the complainant, has given evidence that there was the cohabitation of hardly 1-2 years. He has given evidence that the husband and his parents were demanding Rs.5000/- and gold ring of one tola and on that count, they were giving beating to the complainant. He has given evidence that as the demand was not met with, the husband

married second wife. He has tried to say that when the husband married second wife, the complainant was cohabiting with the husband and only after the second marriage, the complainant returned to the house of her parents. Thus, the version given by the father of the complainant is different.

7. The evidence of Kerba (PW 2) in the cross examination shows that Harubai, accused No. 3, mother of accused No. 1, is his real sister. He has admitted that his mother Yashodabai is alive. He has admitted that his mother Yashodabai has been living with accused No. 3 since 10-12 years prior to his date of deposition. He has admitted that as Yashodabai had grievance that he was not taking proper care of her, she had shifted her residence to her daughter. His evidence shows that in his presence no beating was given to the complainant and the accused never demanded money directly from him. These circumstances create doubt about the case of the prosecution that the illtreatment was given to complainant due to demand of money. This evidence creates another probability for giving of the report.

8. Sudam (PW 3) is the brother of the complainant. His

evidence is also little bit different. He has tried to say that there was the demand of bicycle, wrist watch, cot, bedding etc. also. He has tried to say that complainant used to disclose about the illtreatment to him. He has tried to say that he, his father and others had gone to the husband of complainant to make inquiry and the demand was made to them also. This version is not consistent with the version of the complainant and her father.

9. Sudam (PW 3) has avoided to admit that his grandmother Yashodabai is living for about 10-12 years with accused No. 3. He has, however, admitted that in the year 1986 itself the complainant had filed a proceeding for maintenance against accused No. 1.

10. Rama (PW 4), the maternal uncle, has given evidence on the demand made of cash amount and gold ring and he has stated that later on accused No. 1 married the second wife. His evidence does not show that he has personal knowledge about the demand. His evidence does not show that the complainant had disclosed that there was illtreatment to her on these counts, though he has tried to say that the disclosure about the illtreatment was made. Here it needs to be mentioned that

complainant has not stated in the evidence that she had disclosed about the illtreatment to Rama (PW 4).

11. The aforesaid evidence shows that the evidence is of all the interested witnesses. The parties were related to each other even prior to the marriage of complainant with accused Sopan. A clear probability is created that there was some family dispute and due to the dispute, the complainant had started living separate from the husband and that was well before 1986. Thus, there is a probability that the complaint given in November 1986 was afterthought action of the complainant and reason for the complaint was different. Thus, the evidence given by complainant and her close relatives is doubtful in nature. These circumstances are not considered by the trial Court and the first appellate Court.

12. Reliance was placed by the advocate for the petitioner on some reported cases. In the case reported as **2000 (4) Mh.L.J. 410 Bombay High Court [Bhagwan Sakharam Said and Anr. Vs. State of Maharashtra]**, this Court has discussed and interpreted the provisions of section 498-A of I.P.C. In the case reported as **1993 (1) Mh.L.J. 658 Bombay High Court [Ravindra Pyarelal Bidlan and Ors. Vs. State of**

**Maharashtra]**, this Court had an opportunity to discuss and interpret the same provision. It is observed that it is necessary for prosecution to prove that there was the demand and harassment was given for the purpose of forcing the wife to meet the demands. There cannot be any doubt about this proposition. The facts and circumstances of each and every case are always different. In the present case, this Court holds that the accused is entitled to benefit of doubt.

13. One case reported as **1985 CRI.L.J. 1943 Bombay High Court, Nagpur Bench [Daungarshi Madanlal Zunzunwala Vs. M/s. Deviprasad Omprakash Bajoria and Anr.]** was cited. In this case, this Court has discussed the scope of the powers of this Court under section 397 and 401 of Cr.P.C. The observations are as under :-

"If the Court arrives at a finding without properly considering the evidence on record and without applying the principles of law correctly, it can never be called a "finding of fact" in the accepted sense, as in that case it will amount to perverse and illegal appreciation of evidence. Finding of fact given on this background, even if concurrent, can never be binding on the revisional Courts. To maintain such a finding would lead to miscarriage of

justice and amount to travesty of law. While exercising its revisional powers under S. 397, read with S. 401, the Court has full powers "of satisfying itself or himself as to the correctness, legality or propriety of any finding." An illegal finding does not become a legal one only because it is concurrent."

There cannot be dispute over this proposition also. The parameters for using the powers are different, when proceeding is filed to challenge the decision of conviction and when the proceeding is filed to challenge the decision of acquittal. In the present case, the material circumstances are not touched by the Trial Court, which are discussed by this Court and so this Court holds that interference is required in the decision of J.M.F.C. and the first appellate Court. So the order.

### **ORDER**

- (i) The revision is allowed.
- (ii) The judgment and order delivered by J.M.F.C. Karjat, District Ahmednagar in R.C.C. No. 279/1986, convicting and sentencing the petitioner for offence punishable under section 498-A of I.P.C. is hereby set aside. Similarly, the judgment and order of Criminal Appeal No. 43/1995, which was pending in the Court

of Additional Sessions Judge, Ahmednagar is hereby set aside.

(iii) Accused/petitioner stands acquitted of the offence punishable under section 498-A of I.P.C.

(iv) The fine amount, if any, deposited by the petitioner be returned to him.

(v) Bail bonds of the petitioner stand cancelled.

**[ T. V. NALWADE, J. ]**

SSC/