MAHARASHTRA CRIMINAL JUDGEMENTS

2025(1)MCRJ1

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before B R Gavai; K V Viswanathan]

Criminal Appeal No of 2024 **dated 11/12/2024**

Arjun S/o Ratan Gaikwad

Versus

State of Maharashtra and Others

PREVENTIVE DETENTION

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 Sec. 3 - Preventive Detention - Appeal arises from High Court's decision upholding preventive detention of appellant under MPDA Act - Appellant detained for alleged bootlegging activities based on six cases registered by State Excise and statements of two unnamed witnesses - High Court dismissed petition challenging detention - Supreme Court analyzed distinction between public order and law and order - Found detaining authority failed to demonstrate appellant's activities posed a threat to public order as required under MPDA Act - Allegations against appellant pertained to illicit liquor trade not affecting public tranquility at large - Witness statements were vague and insufficient to establish disturbance to public order - Held that preventive detention, a harsh measure, requires strict compliance with statutory criteria - Quashed detention order and directed appellant's release - Appeal Allowed

Law Point: Preventive detention permissible only if activities threaten public order as distinct from law and order - Vague allegations and unsubstantiated claims cannot justify detention - Statutory safeguards must be strictly followed.

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 Sec. 3

JUDGEMENT

B.R. Gavai, J.- [1] Leave granted.

[2] The appeal is taken up for hearing.

[3] This appeal challenges the judgment and order dated 20th August 2024 passed by the Division Bench of the High Court of Judicature at Bombay, Bench at

Aurangabad in Criminal Writ Petition No. 698 of 2024, thereby dismissing the petition filed by the appellant herein.

[4] Shorn of details, the facts leading to the present appeal are as under:

4.1 The District Magistrate, Parbhani passed an order under Section 3(2) of the The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, DrugOffenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (hereinafter referred to as 'MPDA Act') and thereby detaining the appellant for a period of twelve months, so as to prevent him from indulging in the activities of bootlegging thereby preventing the maintenance of peace.

4.2 The detaining authority had basically relied on the six cases registered against the appellant by the State Excise Department. The grounds of detention were communicated to the appellant on 5th March 2024. The detention order was approved on 14th March 2024 by the Home Department and the confirmation order was passed on 8th May 2024 by the Government of Maharashtra. Several grounds were raised in the petition including the ground that there was no nexus with the alleged activities of the appellant and the order of the detention, inasmuch as there was a gap of about two and a half months between the proposal for detention being forwarded to the detaining authority and the detention order being passed. It is also submitted that the authority had acted in a mechanical manner and without there being any material, had passed the detention order. It was submitted that in any case, the alleged activities do not constitute a threat to the public order and they would fall amongst cases which can be dealt with by ordinary law and order machinery.

[5] We have heard Shri Nachiketa Joshi, learned Senior Counsel appearing for the appellant and Shri Siddharth Dharmadhikari, learned Standing Counsel for the State of Maharashtra.

[6] Though, arguments have been advanced on various issues and a number of authorities have been cited, we find that the appeal deserves to be allowed on a short ground, inasmuch as none of the activities which form the basis of the detention order can be said to be affecting public order.

[7] The basis on which the proposal for detention is passed is the following six cases which are registered by the Authority against the appellant:-

Sr. No.	**Office with whom offence registered**	**Crime No., Date and Section**	**Charge sheet and Date**	**Remark**
1	Sub-Inspector, State Excise, Pathhari	20/2023 dt. 29/1/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.211/2023 dt. 25.3.2023	Subjudice

2	Inspector, State Excise, Parbhani	61/2023 dt. 18/3/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.335/2023 dt. 23.8.2023	Subjudice
3	Inspector, State Excise, Parbhani	89/2023 dt. 24/4/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.338/2023 dt. 23.8.2023	Subjudice
4	Inspector, State Excise, Parbhani	126/2023 dt. 17/05/2023 Maharashtra Prohibition Act Sec. 65(d)(e)	SCC No.358/2023 dt. 04.09.2023	Subjudice
5	Inspector, State Excise, Parbhani	253/2023 dt. 09/09/2023 Maharashtra Prohibition Act Sec. 65(e)(f)	SCC No.419/2023 dt. 20.9.2023	Subjudice
6	Inspector, State Excise, Parbhani	327/2023 dt. 18/10/2023 Maharashtra Prohibition Act Sec. 65(e)(f)		On investigation

[8] Apart from that the detaining authority has also relied on the statements of two witnesses, who have not been named.

[9] Insofar as all the six cases are concerned, they are pertaining to the illicit manufacture of handmade liquor. It is to be noted that these cases are registered during the period between 29th January 2023 to 18th October 2023. It is to be noted that in none of these cases the authorities found it necessary to arrest the appellant herein.

[10] Insofar as the reliance on the statement of the two unnamed witnesses are concerned, the statements are identical in toto. What is stated is that the appellant is engaged in production of handcrafted liquor for the last few years. It is stated that due to these activities there have been various problems for the Government machinery. It is stated that due to the fear and terror created by the appellant nobody appears to raise complaint against him. It is further stated that due to these activities of bootlegging the nearby residents have left their houses and shifted elsewhere. The first witness statement further states that on some day in the last month at 07:00 P.M., when the witness was returning from work towards his residence, the appellant met him near the Gram Panchayat Office and quarreled with him and threatened by saying that if his liquor business was no more, he will not spare him. It is further stated that he had not filed a complaint with the police against the appellant herein due to fear.

[11] Insofar as another witness is concerned, almost similar statement is recorded and the only difference is that the date mentioned here is somewhere in the month of November, 2023 and the time is 20:30 P.M. Incidentally, both these witnesses happened to meet the appellant at the Gram Panchayat Office.

[12] The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of **Ram Manohar Lohia v. State of Bihar and Another**, 1966 1 SCR 709: 1965 INSC 175:

> "**54.** ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....
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> **55.** It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

[13] It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

[14] Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by this Court in the case of **Ram Manohar Lohia** (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of **Ameena Begum v. State of Telangana and Others**, 2023 9 SCC 587.

> "**38.** For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B.

[**Arun Ghosh v. State of W.B.**, 1970 1 SCC 98: 1970 SCC (Cri) 67] , is this: (SCC p. 100, para 3)

"3. ... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"

39. In Arun Ghosh case [**Arun Ghosh v. State of W.B.**, 1970 1 SCC 98: 1970 SCC (Cri) 67] , the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (Arun Ghosh case [**Arun Ghosh v. State of W.B.**, 1970 1 SCC 98: 1970 SCC (Cri) 67] , SCC p. 101, para 5)"

40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [**Ram Manohar Lohia v. State of Bihar**, 1966 1 SCR 709: 1965 SCC OnLine SC 9] also ruled: (Arun Ghosh case [**Arun Ghosh v. State of W.B.**, 1970 1 SCC 98: 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3)

"3. ... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its effect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

41. In Kuso Sah v. State of Bihar [**Kuso Sah v. State of Bihar**, 1974 1 SCC 185: 1974 SCC (Cri) 84] , Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that: (SCC pp. 186-87, paras 4 & 6)

"4. ... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ...

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6. ... The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised."

(emphasis supplied)

[15] As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.

[16] In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.

[17] Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.

[18] In that view of the matter, we do not find that the subjective satisfaction of the detaining authority that the activities of the appellant were prejudicial to the maintenance of public order is substantiated.

[19] The appeal deserves to be allowed on this short ground.

[20] The impugned judgment and order passed by the High Court dated 20th August 2024 so also the order of detention dated 5th March 2024 passed by the detaining authority and the order of confirmation dated 8th May 2024 are quashed and set aside and the appeal is, accordingly, allowed.

[21] The appellant is directed to be released forthwith, if his detention is not required in any other case.

[22] Pending application(s), if any, shall stand disposed of

2025(1)MCRJ7

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Abhay S Oka; Augustine George Masih]

Criminal Appeal No. 4758 of 2024 **dated 25/11/2024**

Sangram Sadashiv Suryavanshi

Versus

State of Maharashtra

COUNTERFEIT CURRENCY

Indian Penal Code, 1860 Sec. 489A, Sec. 34, Sec. 489B, Sec. 489C - Counterfeit Currency - Appellant accused of offences under Sections 489A, 489B, and 489C IPC for possession of six counterfeit currency notes of Rs. 500 each - No prior criminal antecedents established - Appellant incarcerated for over two and a half years - Trial unlikely to conclude promptly - Supreme Court emphasized principle that bail is rule and jail is exception - Directed Trial Court to grant bail with conditions ensuring cooperation in trial - Criticized routine imposition of time-bound trial schedules by High Courts as impractical and contrary to principles laid down by Constitutional Bench - Appeal allowed with directives to circulate judgment among High Court Judges

Law Point: Long incarceration without trial progress justifies bail; routine fixation of trial schedules undermines judicial process and should be reserved for exceptional cases.

Acts Referred:

Indian Penal Code, 1860 Sec. 489A, Sec. 34, Sec. 489B, Sec. 489C

JUDGEMENT

Abhay S. Oka, J.- [1] Heard the learned counsel appearing for the parties.

[2] Leave granted.

[3] The allegation against the appellant is of commission of offences punishable under Sections 489A, 489B and 489C read with Section 34 of the Indian Penal Code, 1860.

[4] Six counterfeit currency notes of Rs.500/- each are subject matter of the offence. The appellant has been incarcerated for two and a half years. The counter affidavit filed by the State shows that there are no antecedents. The trial is not likely to conclude in a reasonable time. Therefore, in the facts of the case, the appellant deserves to be enlarged on bail following the wellsettled rule that bail is rule and jail is an exception.

[5] Accordingly, we direct that the appellant shall be produced before the Trial Court within one week from today. The Trial Court shall enlarge the appellant on bail till the conclusion of the trial on appropriate terms and conditions, including the condition of regularly and punctually attending the Trial Court and cooperating with the Trial Court for expeditious conclusion of the case.

[6] Before we part with this order, every day we notice that in several orders passed by different High Courts while rejecting the bail applications, in a routine manner, the High Courts are fixing a time-bound schedule for the conclusion of the trials. Such directions adversely affect the functioning of the Trial Courts as in many Trial Courts, there may be older cases of the same category pending. Every court has criminal cases pending which require expeditious disposal for several reasons, such as the requirement of the penal statutes, long incarceration, age of the accused, etc. Only because someone files a case in our Constitutional Courts, he cannot get out of turn hearing. Perhaps after rejecting the prayer for bail, the Courts want to give some satisfaction to the accused by fixing a time-bound schedule for trial. Such orders are difficult to implement. Such orders give a false hope to the litigants. If in a given case, in law and on facts, an accused is entitled to bail on the ground of long incarceration without the trial making any progress, the Court must grant bail. Option of expediating trial is not the solution.

[7] In paragraph 47.3 of the decision of a Constitution Bench of in the case of '**High Court Bar Association, Allahabad vs. State of Uttar Pradesh & Ors.** , 2024 6 SCC 267 this Court has held that in the ordinary course, the Constitutional Courts should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Paragraph 47.3 reads thus:

> "47.3. Constitutional courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other courts. Constitutional courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the courts concerned where the cases are pending;"
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> (underline supplied)

[8] A direction which can be issued in exceptional circumstances is being routinely issued by High Courts without noticing the law laid down by the Constitution Bench.

[9] The Appeal is, accordingly, allowed.

[10] Registry to forward soft copies of this order to Registrar Generals of all the High Courts with a request to them to circulate copies to all the Hon'ble Judges of the High Court

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2025(1)MCRJ9

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before B R Gavai; K V Viswanathan]

Criminal Appeal No of 2024 **dated 20/11/2024**

Sunny @ Santosh Dharmu Bhosale

Versus

State of Maharashtra

DOWNGRADED CONVICTION

Indian Penal Code, 1860 Sec. 504, Sec. 302, Sec. 304 - Downgraded Conviction - Appeal challenged conviction under Sec. 302 IPC for killing with a bamboo stick due to a quarrel - Evidence showed no premeditation or motive - Deceased intervened in a dispute unrelated to him - Incident occurred during a sudden altercation after provocation - Trial and High Court findings reviewed - Supreme Court held injuries were caused by a bamboo stick, commonly available in villages, and ruled out undue cruelty - Altered conviction from Sec. 302 IPC to Sec. 304 Part I IPC - Appellant sentenced to time already served, over 12 years with remission - Appeal Partly Allowed

Law Point: Conviction under Sec. 302 IPC requires evidence of premeditation or motive - Sudden provocation without intent to kill may reduce liability to Sec. 304 IPC Part I.

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 302, Sec. 304

JUDGEMENT

B.R. Gavai, J.- [1] Leave granted.

[2] The present appeal arises out of the final judgment and order dated 5th August, 2020, passed by a Division Bench of the High Court of Judicature at Bombay (hereinafter, "High Court"), in Criminal Appeal No. 927 of 2015, whereby the High Court has negatived the challenge to the judgment and order dated 7th July, 2015, passed by the Court of Additional Sessions Judge 3, at Satara (hereinafter, "trial court"), in Sessions Case No. 121 of 2014, thereby upholding the conviction for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter, "IPC") and the imposition of sentence to suffer imprisonment for life along with fine of Rs. 500/- on the appellant.

[3] By way of the present appeal, the appellant has called into question the dismissal of his Criminal Appeal by the High Court.

[4] The facts, in brief, giving rise to the present appeal are as given below.

4.1 The prosecution story is that on 21st March 2014, Sunita Bhosale (PW-6) and her husband Gopal Bhosale went to the house of Rajendra Bhosale (PW-5). At that moment, Rajendra Bhosale had gone to answer nature's call. Sunita Bhosale (PW-6) and her husband were having a conversation with Chayya wife of Rajendra Bhosale (PW5). At about 10:30 PM, Sunny @ Santosh (appellant) came in front of the house of Rajendra Bhosale (PW-5) and started abusing Chayya and Rajendra Bhosale (PW-5) on account of a loan they had taken. When Chayya tried to pacify the appellant, he attempted to assault her. Seeing this, Gopal Bhosale intervened and requested the appellant not to use abusive language and that his grievance could be resolved the next day. The appellant went some distance away from the house of Rajendra Bhosale (PW-5) but then suddenly started abusing Gopal Bhosale in filthy language and called him out of the house in a threatening tone. Gopal Bhosale went out of the house and followed the appellant towards the Northern side of tar road leading towards Khadkoba Temple in the village. It is then that the appellant beat and assaulted Gopal Bhosale particularly on his face and head by means of a bamboo stick causing bleeding injuries. Mangesh Bhosale (PW-3) and Aniket Bhosale (not examined), upon hearing the sound of quarrel so also Rajendra Bhosale (PW-5) who was informed by Sunita Bhosale (PW-6) and his wife Chayya, rushed towards the spot and saw the appellant assaulting Gopal Bhosale by means of a bamboo stick and the injured lying on the ground. Seeing the three of them, the appellant ran away from there. Other people including Sharad Bhosale (PW-4) gathered at the spot. The injured Gopal Bhosale was taken to the Rural Hospital, Khandala, where the doctor declared him brought dead.

4.2 Sharad Bhosale (PW-4) lodged the First Information Report being FIR No. 54 of 2014 at Police Station Khandala, District Satara, on the intervening night of 21st March 2014 and 22nd March 2014 at around 1:35 AM. The FIR was registered for offences punishable under Sections 302 and 504 of IPC.

4.3 Investigating Officer Ashok Shelke (PW-10) conducted the investigation. After preparing the inquest panchnama, the dead body was sent for postmortem. The appellant was arrested. The blood-stained clothes of the appellant were seized by preparing a panchnama. While in police custody, the disclosure statement of the appellant was recorded and at his instance muddemal i.e., bamboo stick was seized under panchnama. The Investigating Officer also recorded the statement of witnesses. He sent blood-stained clothes, bamboo stick, etc., for chemical analysis.

4.4 The Investigating Officer, upon completion of the investigation, filed a chargesheet forwarding the appellant to face the trial. The case was committed to the Sessions Court as the offence punishable under Section 302 of the IPC is exclusively triable by the Sessions Court.

4.5 The trial court, upon hearing, framed charge against the appellant. The appellant pleaded not guilty and claimed to be tried.

4.6 In order to bring home the guilt of the appellant, the prosecution examined ten witnesses. Besides the oral evidence, prosecution has also placed reliance on a number of documents. The incriminating circumstances in evidence were put to the appellant. The appellant denied the circumstances. He led no defence evidence. The defence was of total denial.

4.7 The Sessions Court, upon trial, convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life.

4.8 Aggrieved thereby, the appellant preferred an appeal before the High Court. Vide impugned final judgment and order, the High Court dismissed the appeal filed by the appellant. Aggrieved still, the appellant has filed the present appeal.

[5] We have heard Shri D.N. Goburdhun, learned Senior Counsel appearing for the appellant and Shri Siddharth Dharmadhikari, learned Counsel appearing for the respondentState.

[6] Shri D.N. Goburdhun, learned Senior Counsel, submits that the trial court as well as the High Court has grossly erred in convicting the appellant. It is submitted that the testimonies of the witnesses i.e. Mangesh Bhosale (PW-3), Rajendra Bhosale (PW-5) and Sunita Bhosale (PW-6) would show that there are material contradictions and inconsistencies in their depositions. It is further submitted that there are various contradictions in the FIR on one hand and the testimonies of the alleged eyewitnesses. He, therefore, submits that the judgment and order of conviction is not at all sustainable in law.

[7] Shri Goburdhun in the alternative submits that the evidence of the prosecution witnesses itself would show that the incident was an outcome of a sudden and grave provocation in a quarrel that took place between the deceased and the appellant. It is, therefore, submitted that, in any event, the conviction under Section 302 IPC would not be sustainable and will have to be altered to a lesser offence.

[8] Shri Siddharth Dharmadhikari, learned Standing Counsel for the State of Maharashtra, on the contrary, submits that insofar as the material aspect is concerned, the testimonies of all the three eyewitnesses are consistent. He submits that apart from the testimonies of the eyewitnesses, the circumstantial evidence also points towards the guilt of the appellant. He, therefore, submits that no interference would be warranted with the concurrent judgments and orders passed by the trial court and the High Court.

[9] Rajendra Bhosale (PW-5), states in his deposition that, on the date of the incident the deceased and his wife Sunita Bhosale (PW-6) had come to his residence. He had gone to answer the call of the nature. When he returned, Sunita Bhosale (PW-6) and his wife were standing at the door. They informed that the appellant had come and was abusing the deceased and that the deceased had gone after him. He then, went after them. When he went towards Khadkoba temple, he noticed that the deceased was lying on road near the house situated behind metal-sheet mansion and the appellant

was assaulting him by means of bamboo stick. He states that Mangesh Bhosale (PW-3) and one Aniket Bhosale also came there. Seeing them, the appellant fled away. The deceased had become unconscious. The deceased was taken to the Government hospital where he was declared dead.

[10] The evidence of Rajendra Bhosale (PW-5) is sought to be corroborated by Mangesh Bhosale (PW-3). He stated that hearing the quarrelling noise on the rear side of his house he came out of the house and thereafter saw the appellant assaulting the deceased. However, the presence of this witness is itself doubtful, inasmuch as, Rajendra Bhosale (PW-5) in his crossexamination admits that the house of Mangesh Bhosale (PW-3) is at a distance of 2000-2500 feet from the place of incident.

[11] The prosecution case is, however, also supported by Sunita Bhosale (PW-6), the wife of the deceased.

[12] Taking into consideration the evidence of Rajendra Bhosale (PW-5) and Sunita Bhosale (PW-6), we do not find any error in the finding of the trial court and the High Court that it is the present appellant who assaulted the deceased due to which the death of the deceased has occurred.

[13] The next question that arises for consideration is as to whether the conviction under Section 302 IPC would be sustainable or whether the appellant deserves to be convicted for a lesser offence.

[14] In this respect, it will be relevant to refer to the testimony of Sunita Bhosale (PW-6), the wife of the deceased. She in her evidence states that, she and her husband deceased Gopal had gone to the house of Rajendra Bhosale (PW-5). When they went to the house of Rajendra Bhosale (PW-5), he had gone to answer nature's call. She further states that the accused appellant came there and started abusing Chayya and Rajendra Bhosale (PW-5). Thereafter, her husband tried to persuade the accused appellant telling him why he was abusing them, and they would see about his grievance in the morning. She states that thereafter the accused appellant started abusing her husband deceased Gopal due to his intervention. The accused appellant went from there and the deceased also went behind him. She further stated that she and Chayya, the wife of Rajendra Bhosale (PW-5) stood outside the house. At that time, Rajendra Bhosale (PW-5) also arrived. She states that, when Rajendra Bhosale (PW-5) returned, she and Chayya told Rajendra Bhosale (PW-5) about the incident stating that deceased Gopal had gone behind the accused appellant. She states that, thereafter Rajendra Bhosale (PW-5) went towards Khadkoba temple. He was followed by Mangesh Bhosale (PW-3) and one Aniket Bhosale.

[15] From the testimony of Sunita Bhosale (PW-6) itself, it will be clear that after a scuffle took place at the house of Rajendra Bhosale (PW-5), the accused appellant went from there and the deceased followed him. Thereafter, as to how the assault took place is not clear either from the evidence of Rajendra Bhosale (PW-5) or from the evidence of Sunita Bhosale (PW-6). It is however clear that after the accused appellant

left the place, the deceased followed him. After that, as to what had happened between the deceased and the appellant is not clear from the evidence of the eyewitnesses.

[16] From the evidence of Sunita Bhosale (PW-6) itself, it is clear that the deceased had nothing to do with the incident. The appellant had come to the house of Rajendra Bhosale (PW-5) where she and her husband had gone. Rajendra Bhosale (PW-5) had gone to answer nature's call and three of them i.e. the deceased, Sunita Bhosale (PW-6) and Chayya, the wife of Rajendra Bhosale (PW-5), were present there. The appellant started abusing Rajendra Bhosale (PW-5) and his wife Chayya. The deceased intervened and asked the appellant as to why he was abusing Rajendra Bhosale (PW-5). Irked by the intervention of the deceased, the appellant started abusing the deceased and thereafter went away. It is thus clear that no motive has come on record as to why the appellant wanted to commit the murder of the deceased.

[17] The evidence of the eyewitnesses also does not show that the appellant had come with any weapon. On the contrary, the medical evidence would show that the injuries caused are with the bamboo stick, which is commonly available in a village. The possibility of the deceased following the appellant and an altercation taking place between them and in a sudden fight in the heat of passion the appellant assaulting the deceased cannot be ruled out.

[18] As already discussed hereinabove, the prosecution has utterly failed to prove any case of premeditation. On the contrary, the case as put forth by the prosecution is about the appellant coming to the house of Rajendra Bhosale (PW-5), abusing him and his wife Chayya, and the weapon used is a bamboo stick which is commonly available anywhere in the village. The nature of the injuries sustained by the deceased would also not show that the appellant had taken any undue advantage or acted in a cruel or unusual manner.

[19] In that view of the matter, we find that the appellant is entitled to benefit of doubt. The conviction of the appellant under Section 302 IPC, therefore, deserves to be altered to one under Part I of Section 304 IPC.

[20] We are, therefore, inclined to partly allow the present appeal.

[21] In the result, we pass the following order:

(i) The appeal is partly allowed.

(ii) The conviction of the appellant under Section 302 IPC is altered to the one under Part I of Section 304 IPC.

(iii) The appellant has already undergone actual imprisonment for a period of more than 9 years and with remission he has undergone the sentence of more than 12 years prior to his release on bail by the order of this Court dated 4th October 2024. We, therefore, find that the said sentence would subserve the ends of justice. Therefore, the appellant is sentenced to the period already undergone.

(iv) The bail bonds, if any, shall stand discharged

2025(1)MCRJ14

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before B V Nagarathna; Pankaj Mithal]

Criminal Appeal No of 2024 **dated 04/11/2024**

Saibaj Noormohammad Shaikh

Versus

State of Maharashtra & Anr

SUSPENSION OF SENTENCE WITH VICTIM COMPENSATION

Indian Penal Code, 1860 Sec. 376D, Sec. 354 - Code of Criminal Procedure, 1973 Sec. 389, Sec. 357A, Sec. 357B - Protection of Children from Sexual Offences Act, 2012 Sec. 4 - Protection of Children from Sexual Offences Rules, 2012 Rule 7 - Protection of Children from Sexual Offences Rules, 2020 Rule 9 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 396 - Suspension of Sentence with Victim Compensation - Appellant sought suspension of sentence and bail under Sec. 389 CrPC, having served more than half his sentence - Appellant, convicted of Sec. 376D IPC and Sec. 4 of POCSO Act offenses, argued delay in appeal hearing justified interim relief - State opposed, stressing gravity of offenses against a minor - Supreme Court granted suspension of sentence with bail, citing long custody and co-accused's similar relief - Additionally, Court directed compensation for victim under Sec. 357A CrPC, emphasizing immediate relief under victim compensation schemes, including Maharashtra's Manodhairya Scheme - Directed nationwide adherence to victim compensation protocols for minor or female victims in relevant cases. - Appeal Allowed

Law Point: Courts must ensure victim compensation orders for minor or female assault victims under CrPC Sec. 357A; timely implementation by Legal Services Authority essential

Acts Referred:

Indian Penal Code, 1860 Sec. 376D, Sec. 354

Code of Criminal Procedure, 1973 Sec. 389, Sec. 357A, Sec. 357B

Protection of Children from Sexual Offences Act, 2012 Sec. 4

Protection of Children from Sexual Offences Rules, 2012 Rule 7

Protection of Children from Sexual Offences Rules, 2020 Rule 9

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 396

Counsel:

Sanjay Hegde, Mukund P Unny, Karl Rustomkhan, Nidhi Khanna, Akshata Desai, Prastut Mahesh Dalvi, Siddharth Dharmadhikari, Aaditya Aniruddha Pande

JUDGEMENT

[1] Leave granted.

[2] By order dated 14.10.2024, Shri Sanjay Hegde, learned senior counsel was requested to appear as Amicus Curiae for respondent no.2/victim along with Shri Mukund P. Unny, learned Advocate-on-Record (AOR) as instructing counsel in the matter.

[3] We have heard Shri Karl Rustomkhan, learned counsel for the appellant, Shri Prastut Mahesh Dalvi, learned counsel for the respondent/State and Shri Sanjay Hegde, learned senior counsel/Amicus Curiae along with Shri Mukund P. Unny, learned counsel for respondent no.2/victim and perused the material on record.

[4] Being aggrieved by dismissal of the Interim Application No.951/2020 in Criminal Appeal No.306/2020 on 14.03.2024 by the Bombay High Court under Section 389 of the Code of Criminal Procedure of India, 1973 (CrPC) seeking suspension of sentence and grant of bail, the appellant is before this Court.

[5] Briefly stated, the facts are that the appellant was convicted for the offences punishable under Sections 376-D, 354 of the Indian Penal Code (IPC) and Section 4 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short) and sentenced to suffer twenty years imprisonment with fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months. For the offence punishable under Section 4 of the POCSO Act, the appellant was sentenced to undergo ten years' rigorous imprisonment and fine of Rs.2,500/- and in default, to undergo simple imprisonment for one month.

[6] Being aggrieved by the conviction and sentence imposed, the appellant has preferred Criminal Appeal No.306/2020 before the High Court. In the said appeal, Interim Application No.951/2020 was filed seeking suspension of sentence and bail. By impugned order dated 14.03.2024, the said application has been dismissed. Hence, this appeal.

[7] During the course of submission, learned counsel for the appellant contended that no doubt the Sessions Court has convicted the appellant and has imposed the sentences, as referred to above; that the appellant has already undergone nine years and seven months of actual sentence and ten years and seven months of sentence with remission; that 50% of the sentence has already been undergone by the appellant herein. He has a good case on merits. The appeal before the High Court is of the year 2020 and obviously the High Court would give priority to older appeals. The appellant would have to therefore wait for his appeal being heard. Since, he has already completed 50% of the sentence, this Court may grant the relief of suspension of sentence and bail to the appellant herein as the appellant has a good case on merits. He further submitted that the co-accused has been granted relief of suspension of sentence and bail by the High Court. Hence, he prayed for setting aside the impugned order.

[8] Per contra, learned counsel for the respondent(s)/State submitted that this is not a case where the appellant ought to be granted any relief having regard to the offences for which he has been convicted by the Sessions Court and bearing in mind the victim, who is aged only about 13 years and her vulnerability having been taken advantage of by the appellant and the co-accused, there is also no merit in the appeal filed by the appellant before the High Court. Hence, this appeal may be dismissed.

[9] Shri Sanjay Hegde, learned senior counsel/Amicus Curiae also submitted that there is no merit in this appeal and hence the same may be dismissed.

[10] However, he also brought to our notice the fact that in this case the Sessions Court has not ordered for grant of victim compensation under Section 357-A of the CrPC (Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023) or under the POCSO Act and Rules made thereunder; that in the absence of such a direction being issued by the Sessions Court which convicted the perpetrators, compensation would not be paid to the victim. In this regard, learned Amicus drew our attention to the scheme as contemplated under Section 357-A of the CrPC and submitted that such a scheme is in vogue in every State but hardly being implemented in its true letter and spirit; that in the State of Maharashtra "Manodhairya Scheme" for rape victims, children who are victims of sexual offences and acid attack (women and children) is in operation but it is not known whether in the instant case, the second respondent/victim has been given any benefit under the said Scheme. He also submitted that under Section 357-B of the CrPC, the compensation is in addition to fine under Section 376-D of the IPC and there is also provision for treatment of victims etc. but the same is not being implemented in its true letter and spirit. Learned Amicus therefore, submitted that appropriate directions may be issued not only for the purpose of present case insofar as respondent no.2 is concerned but this Court may enlarge the direction so as to be applicable to all the Courts in the country particularly when the victim is a minor or a woman.

[11] We have considered the submissions advanced at the Bar. We find that in the first place, the appeal is filed by the appellant herein before the High Court, which is of the year 2020. Obviously, older appeals would be heard prior to this appeal being considered. We also notice that the co-accused has been released on bail by the High Court. Further, the appellant has already completed a little more than half the sentence imposed by the Sessions Court. There is no likelihood of the sentence being enhanced as such by the High Court. In the circumstances, we find that the appellant is entitled to suspension of sentence and release on bail.

[12] We, therefore, direct that the appellant be produced before the concerned Sessions Court as early as possible and the Sessions Court shall release him on bail, subject to such conditions as it may deem appropriate to impose.

[13] However, it is directed that the grant of relief to the appellant herein would not result in procrastinating the hearing of his appeal by the High Court.

[14] As far as the other submissions of learned Amicus Curiae are concerned, we note that Section 357-A specifically speaks of victim compensation scheme and under the said provision, it is noted that direction for payment of victim compensation is to be implemented by the District Legal Services Authority or the State Legal Services Authority, as the case may be, and the compensation has to be released to the victim as early as permissible.

[15] On a reading of the order and judgment of the Trial Court, which has convicted the appellant herein for the offence, inter alia, under Section 376-D of the IPC except imposing the fine of Rs.12,500/- (Rs.10,000/- + Rs.2,500/-), we find that no direction for payment of victim compensation to the second respondent/victim has been ordered. Such a lapse on the part of Sessions Court would only delay payment of any compensation under Section 357-A of the CrPC.

[16] In the circumstances, we direct that a Sessions Court, which adjudicates a case concerning the bodily injuries such as sexual assault etc. particularly on minor children and women shall order for victim compensation to be paid having regard to the facts and circumstances of the case and based on the evidence on record, while passing the judgment either convicting or acquitting the accused. Secondly, the said direction must be implemented by the District Legal Services Authority or State Legal Services Authority, as the case may be, in letter and spirit and in the quickest manner and to ensure that the victim is paid the compensation at the earliest.

[17] There can also be a direction for payment of interim compensation which could be made by the Sessions Court depending upon the facts of each case.

[18] For the purpose of implementing the said provision in letter and spirit we direct that a copy of this order be circulated by the Registry of this Court to all the High Courts addressed to the Registrar Generals of the High Courts, who are requested to transmit the said order to all the Principal District Judges in all the Districts of the respective States and for onward transmission to the Sessions Judges dealing with such matters, who are under an obligation to order for victim compensation in an appropriate case.

[19] In the facts and circumstances of the present case, the second respondent shall also be entitled to be considered for compensation under Rule 7 of the POCSO Rules, 2012 and now under Rule 9 of the POCSO Rules, 2020.

[20] Insofar as the present case is concerned, since the Sessions Judge has not awarded any victim compensation to the second respondent, we request the High Court to consider the case for the purpose of awarding of the said compensation, which shall be interim in nature, at the earliest.

[21] Before parting, we record our sincere appreciation of the assistance rendered by Shri Sanjay Hegde, learned senior counsel/Amicus Curiae along with Shri Mukund P. Unny, learned Advocate-on-Record as instructing counsel in the matter and

particularly for advancing arguments on the payment of the victim compensation to the victims of crime under Section 357- A of the CrPC.

[22] With these observations, the appeal is allowed and disposed of

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2025(1)MCRJ18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Y G Khobragade]

Criminal Writ Petition No 1685 of 2023 **dated 13/12/2024**

Shailesh Traders; Harishchandra Nivrutti Ghar; Sumanbai Mohan Makane; Mohan Rangrao Makane; Kavitabai Balu Darode; Gopal S/o Harishchandra Ghar

Versus

Union Bank of India

SARFAESI PROCEDURAL COMPLIANCE

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 3A - SARFAESI Procedural Compliance - Petition challenged Chief Judicial Magistrate's rejection of request for supply of application and affidavit filed under Sec. 14 of SARFAESI Act for taking possession of secured property - Petitioners contended Respondent Bank failed to serve fresh notice under Sec. 13(2) and did not comply with procedural requirements - Court found notice served on Petitioners under Sec. 13(2) was valid and Petitioners failed to respond or challenge it - Observed procedural defect in affidavit filing was curable - Held Sec. 14 proceedings are ministerial, not adjudicatory, and no notice to borrowers required - Dismissed petition as an attempt to delay proceedings - Petition Dismissed

Law Point: Sec. 14 proceedings under SARFAESI Act are ministerial in nature; procedural defects in applications can be cured without impacting validity if substantive compliance is achieved.

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 13, Sec. 14, Sec. 3A

Counsel:

N P Patil Jamalpurkar, Atul A Mishra

JUDGEMENT

Y G Khobragade, J.- [1] Rule. Rule made returnable forthwith. With the consent of both the sides it is heard finally at the stage of admission.

[2] By the present petition, the Petitioners take exception to the order dated 03.11.2023 passed by the learned Chief Judicial Magistrate, Latur below Exh.21 in

Criminal Misc. Application No.621 of 2023, thereby prayer of the Petitioners for supply of copies of application, its affidavit and copy of notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the 'SARFAESI Act') has been declined.

[3] Mr. Jamalpurkar, the learned counsel appearing for the Petitioners vehemently canvassed that Petitioner No.1 is the Proprietorship Firm and running the business of trading of food grains in Market Yard, Latur. On 01.02.2016, Petitioner No.1 approached the Respondent/Bank for sanction of Rs.250.00/- lakhs as OCC Limit (Open Cash Credit). Accordingly, the Respondent/Bank sanctioned the said loan facility. The Petitioner Nos.2 to 6 stood as guarantors to the said loan transaction. Considering the timely repayment of the loan and need of the Petitioner Firm, the Respondent/Bank time to time enhanced Open Cash Credit Limit. The Petitioner No.1/Proprietorship Firm is the loan borrower. The Petitioner Nos.2 to 6 have mortgaged their non-agricultural and residential properties while securing loan in favour of the Respondent Bank.

[4] It is the contention of the Petitioners that, though the loan amount was regularly paid but the Respondent/Bank illegally classified their loan account as Non-Performing Assets (N.P.A.) Thereafter, the Respondent Bank issued a notice under Section 13(2) and Section 13(4) of the SARFAESI Act on 19.04.2021 and 07.06.2021 for taking possession of the secured properties. Therefore, the Petitioner No.1 - M/s Shailesh Traders had filed (S.A) Securitization Application No.128 of 2021 before the learned Debts Recovery Tribunal, Aurangabad (D.R.T).

[5] On 17.10.2022, the learned Presiding Officer, D.R.T disposed off the Securitization Application No.128 of 2021 as the Respondent Bank has withdrawn the notice under Section 13(2) of the SARFAESI Act and granted liberty to avail of appropriate remedy. In spite of the said fact, the Respondent/Bank approached before the District Magistrate, Latur under Section 14 of the Securitization Act, 2002. On 27.03.2023, the learned District Magistrate passed an order and disposed of the said application holding that the Respondent/Bank failed to comply with deficiencies in the application and without complying with the order of the District Magistrate, the Respondent Bank filed an application bearing Criminal Misc. Application No.621 of 2023 under Section 14 of the SARFAESI Act and prayed for physical possession of the secured property.

[6] The learned Counsel for the Petitioners canvassed that the Respondent/Bank already availed remedy before the District Magistrate by filing an Application under Section 14 of the SARFAESI Act but the Respondent/Bank failed to comply with the deficiencies and filed the application u/s 14 of the SARFAESI Act before the learned Chief Judicial Magistrate without compliance of order dated 27.03.2023 passed by the learned District Magistrate. Therefore, second application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Latur, is not maintainable and is liable to be dismissed.

[7] The learned counsel for the Petitioners further canvassed that as per Sec. 14 of the SARFAESI Act, it is mandatory on the part of the authorised person of the Respondent/Bank to file an application on affidavit/solemn affirmation, the application u/s 14 of the Act is not supported by affidavit/solemn affirmation but it is only for verification. Therefore, the Petitioners have filed an Application below Exh.21 and prayed for issuance of directions against the Respondent/Bank to supply the copies of application, its affidavit and copy of notice under Section 13(2) of the SARFAESI Act. However, on 03.11.2023, the learned Chief Judicial Magistrate passed the impugned order and rejected the same without considering the mandatory provisions of Section 13(2) of the SARFAESI Act.

[8] It is further canvassed that the Respondent/Bank failed to follow the provisions of Section 3A of the SARFAESI Act. So also, earlier notice issued by the Respondent/Bank under Section 13(2) of the SARFAESI Act was already withdrawn by the Respondent/Bank but no fresh notice u/s. 13(2) of the Act was served upon the Petitioners/Borrower. Therefore, in absence of service of mandatory notice, the application u/s 14 of the Act is maintainable. However, the learned Chief Judicial Magistrate, Latur failed to consider the same and passed the impugned order. Therefore, it is illegal, bad in law.

[9] Mr. A. D. Baviskar, the Authorized Officer of the Respondent/Bank filed its affidavit in reply and strongly resisted the petition.

[10] The learned counsel for the Respondent canvassed in vehemence that the Petitioners approached the Respondent/Bank for loan facilities and after execution of necessary documents, the Respondent/Bank sanctioned various loan facilities in favour of the Petitioner No.1 - Firm. The Petitioner Nos. 2 to 6 stood as guarantors. The Petitioners mortgaged their landed properties which is secured assets. Since, the Petitioner failed to repay the loan, the loan account was declared as Non-Performing Assets on 31.03.2021. Thereafter, on 19.04.2021, the Respondent/Bank had issued notice under Section 13(2) of the SARFAESI Act to the Petitioners, which was challenged by the Petitioners before the learned Debts Recovery Tribunal in Securitization Application No.128 of 2021. However, the Respondent/Bank withdrew the said notice, hence, said proceeding came to be disposed off on 17.10.2022 with liberty to avail of appropriate remedy.

[11] Thereafter, on 14.09.2022, the Respondent/Bank issued notice to the Petitioners under Section 13(2) which has been served upon Petitioner No.1 on 15.09.2022. The Petitioners neither raised objection to the said notice nor they challenged it before the Competent Authority nor they replied the notice. Therefore, on 04.12.2022, the Respondent/Bank took symbolic possession of the secured assets. The Petitioners have not challenged the symbolic possession of the Respondent/Bank. Thereafter, the Respondent/Bank approached before the Chief Judicial Magistrate, Latur under Section 14 of the SARFAESI Act.

[12] After appearance, the Petitioners filed an Application below Exh. 21 and prayed for issuance of directions against the Respondent/Bank to supply copy of application u/s 14 of the Act, Affidavit and copy of Notice under Section 13(2) of the SARFAESI Act. The Respondent/ Bank filed its say and strongly opposed the Application below Exh.21. The Respondent/Bank contended that fresh notice under Section 13(2) of the SARFAESI Act has already been served upon the Petitioners and complied with mandatory provision, hence, prayed for rejection of the application.

[13] On 03.11.2023, the learned Chief Judicial Magistrate, Latur passed the impugned order taking into consideration the law laid down in cases of **Trade Well & Anr. Vs. Indian Bank & Anr.**, 2007 1 BCR(Cri) 783, and the Judgment dated 26.09.2022 passed by the Hon'ble Supreme Court in Special Leave Petition 16013 of 2022 in the case of **Balkrishna Rama Tarle fead Thr. LRS & Anr. Vs. Phoenix ARC Private Limited & Ors.**, 2023 1 SCC 662 holding that the CMM/DM acting under Section 14 of the Act is not required to give notice either to the borrower or to the third party. However, it has to only verify from the bank or financial institution whether notice under Section 13(2) of the SARFAESI Act is given or not and whether the secured assets fall within his jurisdiction.

[14] In support of these submissions, the learned counsel for the Respondent/Bank placed reliance on the following case laws:

(i) **Balkrishna Rama Tarle Dead Thr. LRS & Anr. Vs. Phoenix ARC Private Limited & Ors.**, 2023 1 SCC 662;

(ii) **Trade Well & Anr. Vs. Indian Bank & Anr.**, 2007 1 BCR(Cri) 783,

(iii) **R.D. Jain & CO. Vs. Capital First LTD. & Ors.**, 2023 1 SCC 675.

[15] It is not in dispute that, initially, the Petitioner No.1- Firm availed loan facilities/OCC limit to the extent of Rs.250 lakhs and agreed to repay the same at rate of interest 12.25% per annum with monthly interest. The Petitioner Nos. 2 to 6 are guarantors to said loan facility. While availing the loan, the Petitioners executed following security documents in favour of bank which are as under:

i) Demand Promissory Note. (RF 211) 11.02.2016;

ii) Composite Agreement Dt.11.02.2016;

iii) Consent letter Dt. 11.02.2016;

iv) Document of Annexure 2 as a supplement to the composite agreement Dt. 11.02.2016;

v) Letter of undertaking Annexure I Dt.11.02.2016;

vi) General Form of Guarantee Dt. 11.02.2016;

vii) Consent letter from Guarantor dt. 11.02.2016;

viii) Simple Mortgage Deed Bearing Day Book No.484/2016 Dt.10.02.2016.

[16] Needless to say that again on 20.07.2017, the Respondent/Bank enhanced the cash credit facility (OCC) to the extent of Rs.325.00/- lakhs @ interest 11.20% per

annum monthly interest. The Petitioners executed following security documents in favour of Bank which are as under:

i) Demand Promissory Note. (RF 211) 30.08.2017;

ii) Composite Agreement Dt.30.08.2017;

iii) General Form of Guarantee Dt.30.08.2017;

iv) Letter of undertaking Annexure I Dt.30.08.2017;

v) Simple Mortgage Deed Bearing Day Book No.3045/2017 Dt.19.08.2017.

[17] Again on 31.10.2019, the Respondent/Bank enhanced the Cash Credit Facility to the extent of Rs.500.00/- lakhs on the request of the Petitioners. The Petitioners executed following security documents in favour of Bank which are as under:

i) Demand Promissory Note. (RF 211) 06.11.2019;

ii) Composite Agreement Dt. 06.11.2019;

iii) Consent letter Borrower Dt. 06.11.2019;

iv) Letter of consent as a supplementary to the Loan documents Dt. 06.11.2019;

v) General Form of Guarantee Dt. 06.11.2019;

vi) Consent letter from Guarantor Dt. 06.11.2019;

vii)Simple Mortgage Deed Bearing Day Book No.7972/2019 Dt.07.11.2019.

[18] It is a matter of record that on 22.09.2020, the Respondent/Bank sanctioned the loan facility for the purpose of conversion of accumulated accrued interest charged/applied to working capital facilities for availment of COVID relief limit of Rs.25,48,922/- on the request of the Petitioners. Accordingly, the Petitioners have executed following security documents:

i) Term Loan Agreement SD-19 Dt. 28.09.2020;

ii) Demand Promissory Note 28.09.2020;

iii)Document of lien and set off. (AD 02A) 28.09.2020;

iv) Letter of continuity (AD09M) 28.09.2020;

v) Letter of undertaking from borrower for disclosure to civil 28.09.2020;

vi) Letter of undertaking from Guarantors for disclosure to civil 28.09.2020;

vii) Letter of Guarantee (SD 01) 28.09.2020;

viii) Debit balance confirmation Dtd.28.09.2020.

[19] It is undisputed fact that the Petitioners failed to repay the loan. Ultimately, on 31.03.2021, the Respondent Bank declared the loan account of the Petitioners being Non-Performing Assets (N.P.A.). It is a matter of record that, on 19.04.2021, the Respondent/Bank issued a notice under Section 13(2) to the Petitioners and also published a notice in the local newspaper on 07.06.2021. No doubt, the Petitioners challenged the said Notice dated 19.04.2021 before the learned Debts Recovery Tribunal, Aurangabad in Securitization Application No.128 of 2021. It is not in dispute

that, on 17.10.2022, the learned Debts Recovery Tribunal, Aurangabad, passed the order and disposed of the said application because the Respondent/Bank withdrew the said notice, however, liberty was granted to the Respondent/Bank for availing appropriate legal remedies.

[20] Thereafter, on 14.09.2022, the Respondent/Bank issued a notice under Section 13(2) of the SARFAESI Act to the Petitioners which was duly served upon the Petitioner No.1 on 15.09.2022 as per endorsement appearing on postal acknowledgment. It is not the case of the Petitioners that they challenged subsequent notice u/s 13 (2) of the Act before the competent authority or they ever objected said notice. Needless to say that, the Petitioners never replied said notice but concealed the fact of service notice on 15.09.2022. Therefore, on 04.12.2022, the Respondent/Bank took symbolic possession of the secured assets. Thereafter, the Respondent/Bank approached before the District Magistrate under Section 14 of the SARFAESI Act.

[21] Indeed, on 27.03.2023, the learned District Magistrate disposed of the application u/s 14 of the SARFAESI Act because the Respondent/Bank failed to comply with certain deficiencies but provisions of Sec. 14 of the Act does not put any embargo for approaching the Financial Institution before the learned Chief Judicial Magistrate, if the District Magistrate disposed off the application due to non removal of deficiencies.

[22] It is an undisputed fact that the Respondent/Bank filed an Application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Latur and prayed for permission to take possession of the secured assets as described in prayer clause A (1 to 9).

[23] No doubt, after appearance, the Petitioners filed Exh.21 an application and prayed for issuance of directions against the Respondent/Bank for supply of copy of application u/s 13 (2) of the Act, Affidavit and copy of notice issued u/s 13(2) of the SARFAESI Act.

[24] Section 14 of the SARFAESI Act, provides as under:

> **"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.**
>
> (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him--
>
> (a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that---

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets 2[within a period of thirty days from the date of application:]

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,--

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate 1[any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

[25] In the case of **Trade Well and Another** cited (supra), this Court held as under:

"The Chief Judicial L Magistrate acting under Section 14 of SARFAESI Act is not required to give notice either to borrower or third party. It is held that "It (Legislature) purposely did not make provision for notice or hearing being given to the borrower or third party at the stage of Section 14. Looking to the scheme of the NPA Act, we are of the opinion that notice or hearing to the borrower or third party is excluded at the stage of Section 14 by necessary implication." Further it is held that "In our opinion, at the time of passing order under Section 14 of the NPA Act, the CMM/DM will have to consider only two aspects. He must find out whether the secured asset falls within his territorial jurisdiction and whether notice under Section 13(2) of NPA Act is given or not. No adjudication of any kind is contemplated at that stage."

[26] In the case of **Balkrishna Rama Tarle** cited (supra), the Hon'ble Supreme Court held as under:

"Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate

Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal."

[27] In the case of **R. D. Jain and Company,** cited (supra), the Hon'ble Supreme Court held that the powers initiated by the DM/CMM under Section 14 of the SARFAESI Act is of ministerial nature and while disposing of application under Section 14, no element of quasi-judicial function or adjudication is attracted, however, the DM/CMM has to adjudicate and decide correctness of information given in application and nothing more.

[28] In the case in hand, the Petitioners have not denied about service of notice dated 14.09.2022 issued by the Respondent/Bank under Section 13(2) of the SARFAESI Act. No doubt, as per the Provisions of Section 14, the details of the transaction and secured assets are required to be submitted on affidavit. On perusal of the record, it appears that Mr. Anilkumar Shrivastava, the Authorized Officer of the Respondent/Bank submitted all transactions history between the Petitioners and the Respondent/Bank on verification which is based on the documentary evidence. The Respondent/Bank has also given detailed description of secured assets. The Petitioners have not disputed about description of secured assets. Therefore, merely solemn affirmation/affidavit is not furnished with the application under Section 14 of the SARFAESI Act, it may be called as a procedural defect, which can be cured by filing additional affidavit.

[29] Since, the Respondent/Bank complied with the provisions of Section 14 of the SARFAESI Act as per view taken by the Hon'ble Apex Court as well as by this Court in the cited case laws, the notice is not required to be given to the borrower or the third party. Nonetheless, the Petitioners are already served notice dated 14.09.2022 issued by the Respondent/Bank under Section 13(2) of the SARFAESI Act but neither the Petitioners replied the same nor they challenged the said notice before the competent authority. Further, the Petitioners have concealed the fact of service notice on 15.09.2022. Therefore, to my mind, filing an application below Exh.21 is itself killing the time.

[30] In view of above discussion, I do not find any substance to disturb the findings of the learned Trial Court, hence, the Writ Petition is dismissed. Accordingly, Rule is discharged

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2025(1)MCRJ27

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Appeal No 227 of 1999 **dated 12/12/2024**

Union of India At Instance of Assistant Director

Versus

Ameenabi and Another

POSSESSION OF CONTRABAND GOLD

Code of Criminal Procedure, 1973 Sec. 397 - Customs Act, 1962 Sec. 111, Sec. 135, Sec. 108 - Foreign Exchange Regulation Act, 1973 Sec. 13 - Imports and Exports (Control) Act, 1947 Sec. 3 - Gold (Control) Act, 1968 Sec. 85, Sec. 8 - Possession of Contraband Gold - Appeal against acquittal concerns alleged unauthorized possession of contraband gold by Respondent under Customs Act and Gold Control Act - Gold seized during raid conducted on Respondent's premises - Accused claimed gold was kept by her brother, a suspected smuggler - Trial Court acquitted Respondent citing insufficient evidence and lack of corroboration - Statements of prosecution witnesses (DRI Officers) were not supported by independent witnesses or panchas - Respondent retracted confessional statement claiming coercion - Trial Court found that prosecution failed to establish conscious possession or sole occupancy of premises beyond reasonable doubt - High Court upheld acquittal emphasizing need for corroboration and strict adherence to evidentiary standards in criminal cases - No error in Trial Court's assessment of facts or law found - Appeal Dismissed

Law Point: Retracted confessional statements require corroboration - Prosecution must prove conscious possession of contraband beyond reasonable doubt - Absence of independent evidence undermines credibility of claims based solely on prosecution officers' testimony.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 397

Customs Act, 1962 Sec. 111, Sec. 135, Sec. 108

Foreign Exchange Regulation Act, 1973 Sec. 13

Imports and Exports (Control) Act, 1947 Sec. 3

Gold (Control) Act, 1968 Sec. 85, Sec. 8

Counsel:

Ruju Thakkar, Priyanshu Doshi, Rohit Chitiken, Manisha R Tidke

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Ms. Thakkar, learned Advocate for Appellant and Ms. Tidke, learned APP for the State. None appears for the Respondent No.1.

[2] This Criminal Appeal challenges judgment of Acquittal dated 14.10.1998 passed by the learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai in CC. No. 198/CW/88. Appellant is the Union of India on behalf of the Directorate of Revenue Intelligence (for short "**DRI**"). It is filed in 1999 and has reached final hearing today. Despite none representing the Respondent, I have perused the impugned judgement and heard the Appellant.

[3] Respondent No.1 - Smt. Ameenabi w/o Late Haji Mohammed Merchant is the original accused who was tried for offences punishable under Section 135 (1) (b) read with Section 135 (1) (I) of the Customs Act, 1962 and Sections 85 (1)(ii) and 85 (1)(a) read with Section 8(1) of Gold Control Act, 1968.

[4] By virtue of the impugned judgement dated 14.10.1998, the learned Trial Court passed order of acquittal of Respondent No.1. For convenience accused shall be referred to as Respondent No.1.

[5] Before I advert to the merits and submissions advanced by the learned Advocate for Appellant and learned APP, it would be appropriate to briefly refer to the relevant facts which are as under:-

5.1. On 04.02.1988 pursuant to information received by the office of Appellant, the residential flat premises where Respondent No.1 was residing was searched. Information received by DRI was that one Mr. Afzal Weldon of Weldon Construction having his residence at 3 rd floor, Terrace building, Lady Jamshetji Road, Mahim, Mumbai - 400 016 was indulging in smuggling of gold in India and storing gold at several places. Information that was received was that residence of Respondent No.1 at Room No.3, First Floor, Arab Mazil Building, Sonawala Lane, Mahim, Mumbai - 400 016 was one such place where the gold was kept by Mr. Afzal Weldon. Respondent No.1 - Ameenabi is the elder sister of Mr. Afzal Weldon. She was a resident of Hyderabad, but after the demise of her husband, she alongwith her children shifted to Mumbai.

5.2. Prosecution raided her residence alongwith panchas and carried out search and seizure operation. According to prosecution after she opened the main door, on seeing the DRI officers, she locked herself in the bedroom and refused to open the bedroom door despite repeated requests made by the DRI officers. The officers noticed that she had thrown some packets out of the bedroom window and some officers went and retrieved those packets which contained gold bars wrapped in newspaper.

5.3. Two packets containing gold bars were retrieved. Thereafter Respondent No.1 opened the bedroom door. According to prosecution, she admitted that she had thrown those packets. On search of the bedroom, DRI officers recovered 3 more packets of gold bars wrapped in newspaper alongwith photograph of Mr. Afzal Weldon, visiting card of Weldon Construction and one telephone diary. All five packets were opened and examined in presence of panchas at the said incident spot. Each packet contained 20 bars of gold, each bar weighing 10 tolas totalling to 100 bars of gold collectively

weighing 1000 tolas (11,660 grams). Since Respondent No.1 did not produce any document to show authorized possession or acquisition of the gold bars, they were seized and confiscated under the Customs Act, 1962 (for short **"Customs Act"**). Four sample bars were drawn and marked by DRI officers. In the statement of Respondent No.1 recorded under Section 108 of the Customs Act she stated that after her husband's death she and her family (children) were looked after by her brother Mr. Afzal Weldon. It is stated in her statement that her brother Afzal informed her that he would be sending his man with packets containing gold bars for keeping at her residence. According to DRI, in the follow up action residential premises of Mr. Afzal Weldon in Terrace building, Mahim was also searched but nothing incriminating was recovered. Respondent No.1 was arrested on 04.02.1988 and was in judicial custody until 26.02.1988 when she was granted bail. By virtue of the impugned judgment, learned Trial Court has acquitted her.

5.4. Being aggrieved DRI has filed the present Appeal against acquittal. The impugned judgment is appended at page 53 of the Appeal. I have perused the same.

[6] Ms. Thakkar, learned Advocate for the Appellant- Union Of India (DRI) would submit that the impugned judgment exonerating Respondent No.1 is challenged on several grounds. At the outset, she would submit that the contraband gold was admittedly recovered from the residence of Respondent No.1 in her own presence and presence of the panchas. She would submit that four sample gold bars retrieved from the contraband seized were sent to the Government of India Mint for assay. She would submit that the assay report certified that the said gold bars were found to be of 999.0, 999.1, 999.1, 999.3 fineness.

6.1. She would submit that the seized gold was primary gold and import of gold without permission of the Reserve Bank of India was prohibited under Section 13 (1) of the Foreign Exchange Regulation Act, 1973 read with Notification issued under the Customs Act and prohibition imposed under Section 111 of the Customs Act. She would submit that import of gold without permission was also prohibited under the Imports (Control) Order 17/55, issued under Section 3 of the Imports and Exports (Control) Act, 1947 and most importantly under Section 8 (1) of The Gold (Control) Act, 1968 no person other than a licensed dealer was authorized to acquire, purchase, receive, possess, keep in custody or control any primary gold. She would submit that Respondent No.1 failed to provide any documentary evidence to show authorized possession of the said gold bars.

6.2. She would vehemently submit that Respondent No.1 transgressed the aforesaid statutory provisions and was found admittedly in unauthorized possession of unaccounted gold which she had knowledge and reason to believe that it was liable for confiscation under Section 111 of the Customs Act, 1962 and she is therefore liable for the offences punishable under Section 135 (1)(b) and 135 (1)(i) of the Customs Act. She would submit that having possession, custody and control of 1000 tolas of primary

gold was in contravention of the statutory provisions of Gold (Control) Act, 1962 and liable for conviction under the said Act.

6.3. She would draw my attention to the statement of accused under Section 108 of Customs Act in which she has stated that after her husband's death she and her family (children) were looked after by her brother Mr. Afzal Weldon and would contend that her act of harbouring the contraband gold was a quid pro quo measure to reciprocate the obligation of her brother. She would also draw my attention to statement recorded by Respondent No.1 that her brother told her that he would be sending his man with the packet containing gold bars for storage at her residence. She would submit that it is stated by her that she agreed to keep the gold bars in her premises as Mr. Afzal Weldon was meeting all her and her family's expenses. She would submit that when she was apprehended she attempted to conceal and destroy evidence by throwing away two packets each containing 20 bars of gold which were retrieved by the Officers of DRI and she confessed to have indulged in such an act.

6.4. She would submit that accused did not have any license or authority to possess 100 gold bars weighing 1000 tolas and thus violated the provisions of Section 111 of Customs Act. She would submit that Panchnama contemplated under Section 108 of Customs Act was drawn in the presence of panchas and the contraband goods i.e. gold bars were seized. After obtaining sanction, prosecution was launched against her. She would submit that her statement recorded below Exhibit P-9 has been duly corroborated by the evidence on record and she was liable for conviction for having possession of unauthorized contraband gold bars weighing 1000 tolas i.e. 11,660 grams and had complete knowledge about possessing the same. She would submit that testimony of PW-1 and PW-2, the Officers of DRI has adequately proved the above search and seizure of contraband gold from her custody despite which the learned Trial Court has not found favour with the prosecution case and concluded that conscious possession of the contraband gold in her possession is not proved.

6.5. She would submit that findings returned by the Trial Court that conviction based merely on the confessional statement of the accused which has been subsequently retracted by her has not been proved as an incorrect finding. Hence, she would submit that impugned judgment of the Trial Court exonerating and acquitting the accused is required to be interfered with by this Court in its revisional jurisdiction.

[7] PER CONTRA, Ms. Tidke learned APP appearing for Respondent No. 2 - State has adopted the submissions made by Ms. Thakkar and after drawing my attention to the judgement of acquittal dated 14.10.1998 persuaded the Court to consider the evidence leading to acquittal of the accused.

[8] I have perused the entire record of the case with the able assistance of the learned Advocate for Appellant and learned APP. Submissions made by them has received due consideration of the Court.

[9] Though under the provision of Section 397 of the Code of Criminal Procedure, 1973, The Court cannot embark upon the exercise of re-appreciation of evidence, but in order to decide the challenge to the impugned judgment of acquittal dated 14.10.1998, to that extent case of prosecution and the evidence will have to be seen. Keeping this aspect in mind in the present case it is seen that the entire case of prosecution relies upon the evidence of PW-1 and PW-2 who were the Officers of DRI who carried out the search and seizure operation. PW-1 is the Superintendent of DRI whereas PW-2 is a retired Superintendent of Central Excise who was working as Senior Intelligence Officer with the DRI at the then time. Apart from the deposition of these two prosecution witnesses, no evidence of any other independent or neutral pancha or witness to the search and seizure operation has been led by the prosecution. Both these witnesses are Officers of DRI and therefore if their oral evidence is required to be believed it ought to have been duly corroborated and supported by evidence of independent panchas and witnesses who were present at the time of search and seizure.

[10] The learned Trial Court has returned a categorical finding that while prosecuting the case the prosecution tried its level best to find out the panchas and witnesses but they could not be traced and summons were not served upon them. This finding of the Trial Court is based upon the report filed by the prosecution stating the above reason for not examining the independent panchas and witnesses to the entire search and seizure operation in the present case. In that view of the matter learned Trial Court held that merely on the basis of the statement of Respondent No.1 recorded under Section 108 of the Customs Act as alleged by the prosecution and the evidences of the two prosecution witnesses, the case against the accused for conscious possession of the subject contraband gold is not proved. The learned Trial Court held that prosecution has not established the fact as to whether Respondent No.1 was the sole occupant of the raided premises, rather it has come on record that the subject premises belonged to Mr. Afzal Weldon (brother of accused). The learned Trial Court has held that prosecution has not provided any cogent evidence to prove that accused was occupying the subject premises solely. There are no statements of any of the neighbors or building residents recorded to prove this fact. That apart there were several other women/police woman present at the time of the raid, but statements of none of those present who participated in the entire operation were recorded.

[11] In the above background when Respondent No.1 had retracted her confessional statement, it was incumbent upon the prosecution to prove its case beyond all reasonable doubts against the Respondent No.1. The defence had argued that the confessional statement was recorded under threat given to accused to harm her minor son. That apart, the confessional statement was recorded in English language whereas the accused had knowledge of Urdu language only. The statement is seen to be signed by accused in Urdu. PW-2 has drafted the handwritten statement in English language and claims to have translated it in Hindi language to Respondent No.1. If

such was the search and seizure operation, then evidence of independent witnesses and panchas was utmost necessary otherwise the action of the DRI Officers becomes circumspect. Resting the prosecution case only on the basis of confessional statement and the twin depositions of prosecution Officers undoubtedly has fallen short of proving the prosecution case and guilt of Respondent No.1 beyond all reasonable doubts. All these questions are clearly answered by the learned Trial Court in paragraph No. 18 (iii) and (iv) of the judgement in favour of Respondent No.1. For reference the said findings are reproduced below:-

"18) (i) XXX

(ii) XXX

(iii) It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there would be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary, in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the culpatory portion could be relied upon to base conviction. However, the prudence and practice require that Court would seek assurance getting corroboration from otter evidence adduced by the prosecution.

(iv) It is true that in criminal law, as also in civil suits, the Trial Court and the Appellate Court marshal the facts and reach conclusion, on facts. In a criminal case, the prosecution has to prove the guilt beyond doubt. The concept of benefit of doubt is not a charter for acquittal. Doubt of doubting Thomas or of a weak mind is not the road to reach the result. If a Judge on objective evaluation of evidence and after applying relevant tests reaches on finding that the prosecution has not proved its case beyond reasonable doubt, then the accused is entitled to the benefit of doubt for acquittal. The question then is; whether the learned Single Judge of the High Court has committed any error of law in reversing the acquittal by the Magistrate. Not Every fanciful reason that erupted from flight of imagination, but relevant and germane requires tested. Reasons are the soul of law. Best way to discover truth is through the interplay of view points. Discussion captures the essence of controversy by its appraisal of alternatives, presentation of pros and cons and review on the touchstone of human conduct and all attending, relevant

circumstances. Truth and falsity are sworn enemies. Man may be prone to speak falsehood but circumstantial evidence will not. Falsity is routed from Man's proclivity to faltering but when it is tested on the anvil of circumstantial evidence truth trans."

[12] In view of the above observations and findings, on reading the impugned judgement, I cannot adopt a different view from what is arrived at by the learned Trial Court.

[13] The impugned judgment of acquittal of the Trial Court dated 14.10.1998 is upheld. Resultantly the Appeal fails.

[14] In view of the above, Criminal Appeal is dismissed

2025(1)MCRJ33

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Vibha Kankanwadi; Rohit W Joshi]

Criminal Application No 2376 of 2023 **dated 11/12/2024**

Rekha W/o Raosaheb Waghmare; Raosaheb S/o Miraji Waghmare; Hemangi D/o Raosaheb Waghmare

Versus

State of Maharashtra; Jaishree Ravi Waghmare

QUASHING OF FIR

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 498A, Sec. 323, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 97 - Guardians and Wards Act, 1890 Sec. 25 - Quashing of FIR - Criminal application under Sec. 482 CrPC sought quashing of FIR registered under IPC Sec. 498A, 323, 504, and 506 for dowry harassment and cruelty - Allegations included demand for Rs.10 lakh and wrongful denial of child custody to respondent - Court held that FIR and witness statements disclosed prima facie case and no grounds to interfere under inherent jurisdiction - Rejected applicants' plea citing non-compliance with custody orders for minor child and mental harassment to respondent continuing due to custody denial - Criminal proceedings upheld against applicants including claims of mental disorder by one applicant - Application Dismissed

Law Point: Allegations in FIR supported by witness statements establish prima facie case under IPC Sec. 498A; inherent jurisdiction to quash proceedings is unwarranted where evidence exists.

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 498A, Sec. 323, Sec. 506

Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 97
Guardians and Wards Act, 1890 Sec. 25

Counsel:
Milind K Deshpande, G A Kulkarni, Hrishikesh V Tunkar

JUDGEMENT

Rohit W. Joshi, J.- [1] Present criminal application is preferred under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "the Cr.P.C." for brevity), challenging F.I.R. bearing Crime No.769/2022 registered with Ambad Police Station, Ambad, Dist. Jalna on 10.11.2022 against the present applicants and one Ravi Raosaheb Waghmare, for the offence punishable under Sections 323, 498-A, 504 and 506 read with section 34 of the Indian Penal Code along with final report No.376/2022 dated 27.12.2022 filed by the said Police Station under Section 173 of the Cr.P.C. as also Regular Criminal Case No.276/2022 pending on the file of the learned Judicial Magistrate, First Class at Ambad registered pursuant to the said final report.

[2] Respondent No.2 - informant has lodged the above FIR on 10.11.2022. Applicant Nos.1 to 3 are mother-in-law, father-in-law and sister-in-law respectively of the informant. The husband of the informant is not party to the present application.

[3] It is case of the informant that her marriage with Ravi Waghmare, son of applicant Nos.1 and 2, was solemnized on 30.05.2019. She has daughter from the said marriage, which was around 2 years old on the date of lodging of FIR. The allegation in the FIR is that husband-Ravi used to demand a sum of Rs.10,00,000/- from the parents of respondent No.2 - informant for purchasing a Car and since the said amount could not be arranged, he used to abuse and beat her. It is alleged that applicant Nos.1 to 3 also used to abuse her raising demand for money. In her supplementary statement dated 11.11.2022, respondent No.2-informant has stated that on 01.05.2022, the applicants and her husband-Ravi abused her again reiterating the demand for Rs.10,00,000/- and expelled her from the house. She states that the applicants and her husband-Ravi did not allow her to take her daughter Abha along with her. Respondent No.2-informant thus states that she has constantly subjected to harassment and cruelty, since her parents did not fulfill their demand of dowry of Rs.10,00,000/-. The statements of her parents and brothers are also recorded. It will also be pertinent to mention here that statement of one Kuldeep Jadhav, who is relative of the applicants, is also recorded. He states that respondent No.2-informant had apprised him about the mental torture and harassment meted out to her by the applicants and her husband-Ravi for demand of Rs.10,00,000/-.

[4] It will be pertinent to mention here that respondent No.2- informant had filed a proceeding under Section 97 of the Cr.P.C. before the learned Judicial Magistrate, First Class, Ambad, being Criminal Misc. Application No.240/2022, seeking search warrant and custody of her daughter. Ravi, the husband and applicant Nos.1 and 2 herein were arrayed as non-applicants in the said matter. Pursuant to the order passed

by the learned Magistrate, daughter Abha was produced in the Court, however, the learned Magistrate held that the daughter was not wrongly confined by Ravi, who was her father and, therefore, the application under Section 97 of the Cr.P.C. was not maintainable, and as such, the Magistrate was pleased to reject the said application on 29.06.2022 granting liberty to respondent No.2-informant to seek recourse to proper remedy under law for custody of her daughter. Respondent No.2-informant has thereafter filed proceeding under Section 25 of the Guardians and Wards Act, 1890, being Misc. Civil Application No.14/2022, which came to be allowed by the learned Additional District Judge, vide order dated 28.08.2023. However, the said order is not complied with and the daughter is still in the custody of Ravi, husband of respondent No.2-informant. During the course of hearing held on 18.11.2024, we had inquired with the learned Advocate for the applicants about whereabouts of Ravi, who is son of applicant Nos.1 and 2 and brother of applicant No.3. Learned Advocate informed on instructions that the applicants were not aware about whereabouts of Ravi. On a specific query, they replied that they had also not filed any missing report on the count that their son Ravi was not traceable. The order granting custody passed by the learned Additional Sessions Judge is still not complied with.

[5] It is hard to believe that the applicants are not aware about whereabouts of their son and have still not taken any steps to find him. It appears that as a matter of strategy, husband-Ravi is not coming before the Court in order to keep custody of his daughter Abha in defiance to the order of custody passed by the Competent Court. His parents and sister have filed the present application seeking quashing of FIR and criminal proceedings on the ground that there is no material against them in order to make out a case under Section 498-A of the IPC. It is difficult to digest that they are not aware about address and whereabouts of Ravi. It is apparent that they are deliberately not divulging the necessary details.

[6] As regards the merits of the matter, Shri Milind Deshpande, learned Advocate for the applicants is strenuously argued that the allegations in the FIR regarding demand of dowry, harassment and cruelty are vague in nature and lacking any material particular. He contends that respondent No.2 - informant has falsely implicated them in the offence. He would go on to submit that in the investigation also no material has been gathered against them to remotely suggest their involvement in the offence. Learned advocate, therefore, submits that this is a fit case for exercising our powers under Section 482 of the Cr.P.C. in order to quash FIR and criminal case.

[7] As against this, Shri G.A. Kulkarni, learned APP and Mr.H.V. Tungar, learned Advocate for respondent No.2 submit that clear and definite allegations have been levelled in the FIR and as also in the supplementary statement made by respondent No.2-informant. They further claimed that the statements of the witnesses particularly that of Kuldeep Jadhav, who is relative of the applicants, would clearly demonstrate that there is substance in the allegations levelled by respondent No.2 against the applicants. They further go on to submit that the veracity or otherwise of the

allegations cannot be judged while adjudicating the present application, and that, for the purposes of the present application all the allegations in the FIR and statements of the witnesses will have to be assumed to be correct. Apart from this, learned Advocate for respondent No.2 has strenuously argued that the power under Section 482 of the Cr.P.C. is discretionary power, and that having regard to the conduct of the applicants and Ravi, the husband of respondent No.2 - informant, in not handing over custody of daughter Abha in defiance of the order of custody passed by the Competent Court, disentitles them to invoke our jurisdiction under Section 482 of the Cr.P.C. and as such, the application is liable to be rejected without going to merits of the matter.

[8] We have perused the FIR and charge-sheet with documents appended thereto with the able assistance of learned respective Advocates appearing in the matter.

[9] We are of the opinion that the parties, who do not have regards for judicial orders passed by the Competent Court of law, are not entitled to invoke our jurisdiction under Section 482 of the Cr.P.C. The Hon'ble Supreme Court in the case of Padal Venkata Rama Reddy Alias Ramu Vs. Kovvuri Satyanarayana Reddy and others,2011 12 SCC 431, has held that jurisdiction under section 482 of the Cr.P.C. is a matter of discretion and as such the High Court can refuse to exercise powers under the said provision having regard to conduct of applicant/s before it.

[10] We could have rejected the present application solely on the count that the applicants have not handed over custody of the daughter to respondent No.2 despite the order dated 28.08.2023 passed by the Additional Sessions Judge in Misc. Civil Application No.14/2022. However, having regard to the age of applicant Nos.1 and 2 and statement that applicant No.3 is a specially abled person, we propose to deal with the matter on merits.

[11] At the outset, we would like to state that at the stage of deciding as to whether criminal prosecution should be continued or nipped in the bud, we are constrained to take allegations in the FIR so also the statements made by the witnesses before the Police Authorities on their face value. We can interfere only on the face of the allegations and statements of the witnesses, essential ingredients of the offence are not made out. We cannot conduct a mini trial and look into veracity of the contents of FIR and statements.

[12] Respondent No.2 has narrated that her husband - Ravi and applicants, who are her parents-in-law and sister-in-law used to constantly harass her on account of her failure to collect money from her parents as demanded by them. There is a specific allegation that they used to demand a sum of Rs.10,00,000/- from her for purchasing a car. The statements of witnesses i.e. parents of respondent No.2 and her brothers are recorded, which support her version with respect to demand of dowry and harassment meted out to her on account of failure to fulfill the demand. In her supplementary statement dated 11.11.2022, respondent No.2 has specifically stated that on 01.05.2022, she was driven out of her matrimonial house by the husband and all three

applicants by stating that unless she brings amount of Rs.10,00,000/-, she will not be allowed to return her matrimonial house. She has also stated that husband and applicants also forcibly retained custody of her daughter while expelling her from residential house. Most importantly the version of respondent No.2 and her parents and brothers find corroboration in the statement of Kuldeep Jadhav, who is relative of the applicants. In view of the above statement, it is difficult to disbelieve the version of respondent No.2 and prosecution witnesses at this stage.

[13] As mentioned above, the daughter of respondent No.2, who is now only around four years old is kept away from her. A judicial order passed by the Competent Court of law is also not being obeyed. Although, the daughter is with husband, we have already recorded above that the applicants herein are assisting his husband in the sense that his whereabouts are not being disclosed. Keeping a young child of four years old away from her mother in defiance of Court order also amounts to mental harassment amounting to cruelty in as much as it would certainly cause grave injury to mental health of respondent No.2, mother of the child. Such act of the in-laws amounts to cruelty within the meaning of Explanation (a) to Section 498-A of IPC. We further record that the said mental harassment is continuing from day to day till date. It is a continuing wrong.

[14] We are therefore of the opinion that this is not a fit case for exercising our inherent jurisdiction vested under Section 482 of the Cr.P.C. in order to quash the criminal prosecution against the applicants.

[15] Learned Advocate for the applicants has submitted that applicant No.3 is a specially abled person suffering from mental disorder. Our attention is drawn to documents filed on record, which show that she is suffering from schizophrenia. Schizophrenia affects behavior of patient intermittently for certain duration of time. It is not a constant medical condition. In the event, the applicants deem it fit, they may take recourse to provisions of Chapter XXV of the Cr.P.C. in the proceedings before learned Magistrate with respect to the alleged ailment of applicant No.3. We do not deem it appropriate to quash proceedings against her on the ground that she is allegedly suffering from schizophrenia. Accordingly, we pass the following order:-

ORDER

(i) The criminal application is dismissed

2025(1)MCRJ37

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Appeal No 486 of 2004 **dated 06/12/2024**

State of Maharashtra

Versus

Vishal Prakash Shinde and Ors

ACQUITTAL UPHELD

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 498A, Sec. 323 - Acquittal Upheld - Appeal challenged trial court judgment acquitting respondents in dowry harassment and assault case under Sec. 498A, 323, 504 read with Sec. 34 IPC - Prosecution relied on complainant's testimony alleging demand of Rs. 80,000 and harassment - Evidence revealed inconsistencies, lack of corroboration, and no medical proof of assault - High Court held mere allegations and vague statements insufficient to establish cruelty or harassment beyond reasonable doubt - Upheld acquittal citing absence of substantive proof and failure of prosecution - Appeal Dismissed

Law Point: Allegations under Sec. 498A IPC require credible evidence of cruelty or harassment - Courts must assess charges with strict adherence to evidence and legal standards for conviction.

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 498A, Sec. 323

Counsel:

Manisha R Tidke, P J Pawar, L S Nalawade

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Ms. Tidke, learned APP for Appellant - the State of Maharashtra and Mr. Pawar, learned Advocate for Respondent Nos.1 to 5.

[2] The present Appeal is directed against judgement of acquittal dated 29.11.2003 passed by the learned Trial Court in R.C.C. No.16 of 2002. It is filed by State of Maharashtra. Respondent Nos.1 to 5 are original Accused Nos.1 to 5. Respondent No.3 who is Accused No.3 has expired in the interregnum. Offences for which Respondents were tried were under Sections 498A, 323, 504 read with Section 34 of Indian Penal Code, 1860 (for short **'IPC'**). Complainant is the wife. Accused No.1 is her husband, Accused No.2 is her mother-in-law; Accused No.3 was her father-in-law who is no more; Accused No.4 is her brother-in-law and Accused No.5 is wife of Accused No.4. Marriage of complainant and Respondent No.1 took place on 25.06.2001. It was an arranged marriage. Complainant left her matrimonial home on 25.12.2001 and filed complaint / First Information Report (for short **'FIR'**) on 26.12.2001. Between the date of marriage and 25.12.2001, admittedly complainant cohabited with her husband and in-laws in her matrimonial home, save and except during Diwali of that year when she visited her parental home. In so far as Respondent Nos.4 and 5 are concerned, complainant admitted in her witness action that they lived separately and in her cross-examination gave admission that it was true that Respondent Nos.3 and 4 (Original Accused Nos.4 and 5) never quarreled with her.

[3] Prosecution led the evidence of four witnesses, PW-1 was the Complainant herself; PW-2 was a lady called Anjali Pralhad Sonawane who had arranged the

marriage of Complainant with Respondent No.1; PW-3 is the father of Complainant and PW-4 is the Investigating Officer.

[4] Briefly stated, prosecution case is that within one month after marriage some time in July-2001, Complainant was assaulted and a demand was made from her to bring Rs.80,000/- from her parents which were the expenses incurred by Respondents on the marriage of Complainant and Respondent No.1. Though in the FIR, adequate details are not stated but on lodging the complaint on 26.12.2001, a detailed statement of complainant was recorded. The deposition and examination of PW-1 is incidentally on the facts which are stated in her detailed statement which was recorded. After the incident in July, complainant has stated that in September-2001 on one particular day she was assaulted for not cooking a proper meal. She next stated that in September-2001 she was assaulted at the instigation of Respondent Nos.3 and 4 (original Accused Nos.4 and 5).

[5] It is pertinent to note that no specific details as to aforesaid acts of cruelty alleged by her in July and September have been stated in her recorded statement save and except what is stated hereinabove. Next she has stated that after she returned to her matrimonial home post Diwali festival on 25.11.2001, Accused No.3 (now expired) abused her for spending too many days in her parental house. Thereafter in her complaint she has stated that she was assaulted by kick blows. Once again, no details whatsoever are given in her recorded statement as also in her evidence. Thereafter according to Complainant in the month of December namely on 04.12.2001, she was assaulted and on 23.12.2001 she was ill-treated and a demand of Rs.80,000/- was made from her. Perusing the complaint and evidence of the Complainant, it is seen that no further details except for the above stated incidents have been given by her .

[6] From the above, it is seen that allegation of demand of Rs.80,000/- is made according to complainant once in July and second time on 23.12.2001. Apart from the aforesaid four specific incidences, there is no other allegation. Thereafter Complainant on her own volition left her matrimonial home on 25.12.2001 alongwith her uncle. The edifice of the prosecution case for invoking charges of Sections 498A and 323 read with Sections 506 and 34 of IPC is based on the aforesaid statements and nothing more. Prosecution attempted to prove these allegations through its witnesses. PW-1 deposed below Exhibit-49, the aforesaid facts and nothing more. However, in her cross-examination she has admitted to the fact that original Accused Nos.4 and 5 were living independently and not in their house. She has admitted that in so far she and her husband were concerned, they were given independent room to reside. She has also categorically admitted in her cross-examination that original Accused Nos.4 and 5 never quarreled with her.

[7] What is significant to note in her cross-examination is the fact that she has admitted that the incidents which occurred and were narrated by her in her complaint were not complained by her or even by her parents. This is significant because according to her, she brought these incidents about ill-treatment meted out to her by

Respondents to the notice of her elder sister. However, ironically neither the complainant nor her parents or her elder sister filed any complaint about cruelty or harassment against Respondents. It is seen from her cross-examination that efforts were made to reconcile the differences between parties after she left her matrimonial home but they did not fructify. The thread of demand for Rs.80,000/- forms the basis of the complaint but it is seen from Complainant's own evidence and her statement that it was made once in July and thereafter on 23.12.2001. However, no details whatsoever as to how the said demand was made, who made the demand and in what circumstances are not stated.

[8] In so far as evidence of PW-2 i.e. the person who arranged the marriage of Complainant with Respondent is concerned, same does not touch upon any of the allegations relating to cruelty/harassment/ demand leading to chargesheeting of the four Accused under the aforementioned provisions of IPC. Hence PW-2's evidence cannot be considered. PW-3 - father of complainant has deposed that he realised about the harassment of complainant through his elder daughter i.e. elder sister of complainant but he did not take any steps. Hence, whether mere allegation of the demand or harassment can be considered by the Court for indicting and convicting the Respondents was the question answered by the Trial Court against the Applicant. PW-4 who is the Investigating Officer has placed on record the aforesaid details as considered by the Trial Court and nothing more.

[9] Learned Trial Court in its judgement after considering the gamut of evidence placed before it returned cogent findings after analyzing the evidence of all four prosecution witnesses. Proof of cruelty is something which is left to be answered in the present case. Mere allegation of harassment or mere demand cannot amount to cruelty. In this regard, explanation (b) given to the principal provision under Section 498A of IPC itself comes to aid of the Accused. This is so because as delineated hereinabove, in none of the incidents between July - 2001 and December - 2001, Complainant has given any details, neither the complainant has ever complained nor her parents nor her elder sister who had knowledge filed any complaint. Her elder sister's statement was not recorded and her evidence was also led by the prosecution.

[10] Needless to state that there is no medical evidence supporting the case of prosecution which has been duly considered by the learned Trial Court for the charge under Section 323. What is significant to note is the fact that for the purpose of alleging assault, abuse and demand, complainant has in her own statement not even stated about the action or manner in which her husband or her in-laws ill-treated her and therefore her case borders clearly on allegations.

[11] Mr. Pawar has placed reliance on the decision of this Court in the case of Ravindra Pyarelal Bidlan and Others Vs. State of Maharashtra,1993 CrLJ 1309 and would contend that in view of the explanation (b) to Section 498-A, mere harassment or mere demand of property cannot be construed as cruelty. In view of above and after perusing the statement of the Complainant and the impugned judgement, I am not

inclined to place any implicit faith in the allegations of demand made by the Complainant consequentially leading to abuse, assault and ill-treatment of the Complainant. Nothing whatsoever has been proved by complainant in the present case. The indictment and involvement of Respondent Nos.4 and 5 is absolutely unwarranted in view of the admissions of Complainant herself in her cross-examination.

[12] Prosecution has not proved the present case beyond all reasonable doubts rather it has failed and therefore I see no reason as to why this Court should interfere in the reasoned judgment dated 29.11.2003 delivered by learned Trial Court. The judgment is correctly passed ans is upheld. If bail bonds have been given, the same shall stand cancelled in accordance with law.

[13] In view of the above observations and findings, Criminal Appeal is dismissed

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2025(1)MCRJ41

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Revision Application; Interim Application No 412 of 2015; 1054 of 2020 **dated 05/12/2024**

Vijay Lulla; Sharda Natwarlal Patel

Versus

State of Maharashtra

DISCHARGE APPLICATION

Indian Penal Code, 1860 Sec. 324, Sec. 504, Sec. 34, Sec. 302, Sec. 325, Sec. 452, Sec. 120B, Sec. 323, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 227 - Discharge Application - Applicant challenged rejection of discharge Application by Sessions Court in a murder case involving alleged conspiracy among accused - Prosecution relied on vague witness statements lacking corroborative evidence - Applicant was not present at crime scene nor linked to any active participation or conspiracy - Court observed no prima facie evidence of Applicant's involvement or role in incident - Held that mere presence in building earlier on day of incident insufficient to establish nexus with crime - Rejection of discharge Application by Sessions Court quashed - Applicant discharged from trial proceedings - Application Allowed

Law Point: Discharge permissible where prosecution fails to establish prima facie evidence linking accused to alleged offence or conspiracy despite circumstantial presence.

Acts Referred:

Indian Penal Code, 1860 Sec. 324, Sec. 504, Sec. 34, Sec. 302, Sec. 325, Sec. 452, Sec. 120B, Sec. 323, Sec. 506

Code of Criminal Procedure, 1973 Sec. 227

Counsel:

Rajendra Singh Saluja, Pradeep Raisinghavi, Samarendra Choudhury, Manisha R Tidke

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Mr. Saluja, learned Advocate for Applicant and Ms. Tidke, learned APP for Respondent - State. None present for Intervenor.

[2] By the present Criminal Revision Application, Revision Applicant - Accused No.6 is challenging rejection order dated 22.05.2015 passed by Additional Sessions Judge, Vasai on Application filed below Exhibit "104" in Sessions Case No.67 of 2008 seeking discharge under Section 227 of the Code of Criminal Procedure, 1973 (for short "**Cr.P.C.**").

[3] Interim Application No.1054 of 2020 is filed by first informant Mrs. Sharda Natwarlal Patel for intervening in the Revision Application. However when the matter is listed for hearing before the Court, none was present on her behalf to prosecute the same on the previous date as also today. Revision Application is filed in 2015. Intervention is filed in 2020. Matter cannot be protracted further. It is the duty of the litigants and their Advocates to be vigilant, diligent in attending to matters.

[4] Briefly stated, prosecution case is that first informant, deceased and all accused were residents of building in Mangalam Apartments situated at Nalasopara (East), Taluka Vasai, District Thane. There was some friction between accused Nos.5 and 7 on one side and deceased on the other over administration of Society work due to which accused Nos.2, 5, 6 and 7 who are all relatives of the Lulla family allegedly held a grudge against deceased. It is alleged that prior to the present incident, accused Nos.2, 5, 6 and 7 had assaulted deceased and F.I.R. was lodged against them leading to their arrest. It is alleged that dispute between accused Nos.2, 5, 6, 7 and deceased augmented in furtherance of which accused Nos.2, 5, 6 and 7 hatched a conspiracy to murder the deceased and roped in accused Nos.1, 3 and 4. Incident of assault by Accused Nos.1, 2, 3 and 4 on deceased Mr. Multanmal Jain took place on 29.03.2008 at 08:00 p.m. in his Flat No.201. Precursor of this incident is the quarrel which took place on 28.03.2008 at 09:00 pm. This quarrel was on account of an incident. Flat No.301 was owned by Mr. Jitu Panchal. The licensee of Flat No.301 was Ms. Kashmira Mandliya. A visitor to her flat namely Ms. Heena Lulla by splashing water washed her face in the balcony window of Flat No.301 and water dropped down in the balcony of Flat No.201 belonging to deceased Mr. Jain. He got incensed and barged into Flat No.301 and picked up a quarrel. When both incidents on 28.03.2008 and 29.03.2008 took place, admittedly Applicant was not present. Accordingly on the date of incident i.e. on 29.03.2008, accused Nos.1 to 4 barged into the flat of deceased, verbally abused him over a quarrel that took place between them on the previous evening and assaulted him with wooden stick eventually leading to his death. It is

alleged that Ms. Sharda Patel - first informant lived in Flat No.203 was a relative and neighbour of the deceased who intervened in the fight, however she was assaulted by the accused with wooden sticks causing injury to her.10 FIR No.16 of 2008 was registered by Respondent against accused Nos. 1 to 7 for offences under Section 302, 323, 324, 325, 452, 504, 506 readwith 34 and 120(B) of the Indian Penal Code, 1860 (for short "**IPC**") at instance of first informant. On completion of investigation, chargesheet came to be filed against all accused in the Court of Additional Sessions Judge, Vasai including present Applicant. He filed Application below Exhibit "104" for discharge under Section 227 of Cr.P.C. By order dated 22.05.2015, Additional Sessions Judge rejected his Application for discharge. Hence, the present Revision Application.

[5] Mr. Saluja, learned Advocate appearing for Applicant - accused No.6 has drawn my attention to the statement dated 30.03.2008 of two eye-witnesses to the incident namely Mrs. Santoshi Durjan Singh Rajput and her daughter Ms. Jyoti Durjan Singh Rajput who have categorically deposed that though Flat No.304 in the Society is owned by Applicant, he alongwith his family resides in a different Society and his said Flat No.304 of the Society is occupied by his elder brother Mr. Narendra Lulla and his wife Mrs. Jaya Lulla (accused No.5). Name of Applicant - Accused No.6 is Vijay Lulla. He would submit that accused No.5 - Mrs. Jaya Narendra Lulla has been discharged by order dated 27.09.2012 of this Court in Criminal Revision Application No.503 of 2010. He has drawn my attention to the said order.

5.1. Next, he would submit that Additional Sessions Judge has accepted the prima facie prosecution case against Applicant while placing sole reliance on the statement of an eyewitness namely Mrs. Kashmira Mandliya who has stated in her statement that on the date of incident i.e. on 29.03.2008 present Applicant - accused No.6 came to her residence alongwith his brother Mr. Ramesh Lulla and stated before her that they will teach a lesson to the deceased. He would submit that however there is nothing on record to corroborate their statement of the eye-witness as even the statement of her daughter Ms. Manasvi Mandliya. He would submit that admittedly present Applicant was not present at the spot of incident during the incident. Hence, he would submit that mere presence of Applicant on 29.03.2008 in the building at a different point of time cannot prove the complicity of Applicant and link him to the incident which occurred at night time.

5.2. He would submit that the learned Additional Sessions Judge ought to have considered that accused No.5 - Mrs. Jaya Lulla whose incidentally stayed in the same building and who admittedly met the other accused similarly during the day has been discharged. He would submit that Applicant's case lies on a similar footing for seeking discharged, rather on a better footing than that of original Accused No.5.

5.3. He would submit that there is not an iota of evidence to establish any prima facie case, motive, intention, conspiracy, collusion against the present Applicant and there is no sufficient ground for proceeding with trial against the Applicant. Hence, he

would urge the Court to discharge Applicant - accused No.6 from Sessions Case No.67 of 2008 pending on the file of Additional Sessions Judge, Vasai.

[6] PER CONTRA, Ms. Tidke, learned APP for Respondent -State has vehemently opposed the Revision Application. She would submit that the offences involved in the present case are of a very serious nature which resulted in death of deceased. She would submit that case of accused No.5 Mrs. Jaya Lulla and present Applicant are different. She has drawn my attention to the statement of the eye-witness Mrs. Kashmira Mandliya who has referred to Applicant's presence in the building on the date of incident much before the incident occurred. She would submit that involvement of present Applicant in the crime cannot be ruled out as he alongwith his other family members is accused of conspiracy hatching a conspiracy to eliminate the deceased. Next she has drawn my attention to statement dated 30.03.2008 of another eye-witness Mr. Mehul Patel, son of first informant who has stated about previous animosity between the deceased and members of the Lulla family. She would urge the Court that the order dated 22.05.2015 passed by the Additional Sessions Judge, Vasai be upheld and the Accused No.6 - Revision Applicant be subjected to trial.

[7] I have heard Mr. Saluja, learned Advocate for Revision - Applicant and Ms. Tidke, learned APP for Respondent - State and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

[8] Applicant before me is accused No.6 and he has challenged order of rejection of this discharge Application dated 22.05.2015 passed by Additional Sessions Judge, Vasai in Sessions Case No.67 of 2008. The name of Applicant - accused No.6 has surfaced in the statement of Ms. Kashmira Mandliya. In her statement, she has stated that accused Nos.6 and 7 visited her flat namely Flat No.301 on the date of incident in the afternoon. In those alongwith Accused Nos.5 who was also present. At that time, one Ramesh Lulla - Accused No.7 expressed that deceased and first informant Ms. Sharda Patel, who were residing in the same building had become a nuisance for the Society as they were in the habit of defaming everybody and a lesson should be taught to them. I have perused the statement dated 28.08.2008 of Ms. Kashmira Mandliya. From a bare reading of the said statement, it is clear that no specific overt act is attributable to accused No.6 - Applicant before me. Merely being present at Flat No.301 alongwith accused Nos.5 and 7 and the aforesaid statement made by Accused No.7 cannot be held as an act attributable to Applicant unless it can be prima facie shows that Applicant played any active role or was involved in any conspiracy or was present at the incident spot alongwith others, participated in the incident resulting in causing injury to deceased to which he succumbed later on. Admittedly, Applicant was not present at the incident spot.

[9] Hence, it can not be said that Applicant could be involved in the incident. That apart, with reference to statement of Ms. Kashmira Mandliya, there is nothing placed on record by prosecution after investigation to link Applicant - accused No.6 to the

incident in any respect whatsoever. The role of Applicant having any nexus with the incident or deceased or hatching any conspiracy to eliminate the deceased or to cause harm to deceased is not brought and established before the Court by the prosecution. A mere vague but sweeping statement by Ms. Kashmira Mandliya that accused Nos.5, 6 and 7 visited her house and accused No.7 expressed his view about the nuisance caused by deceased alongwith Ms. Sharda Patel and he needed to be taught a lesson cannot be attributable to indictment of Applicant being part of any conspiracy to eliminate the deceased. There is virtually no prima facie evidence to establish role of Applicant to the incident. Save and except that he had visited the building namely Flat No.301 during the day, there is nothing attributable whatsoever to Applicant. Incident occurred in Flat No.201 at night 09:00 p.m.. Other 4 Accused were present, whose names are given by first informant, eye-witness to the incident of assault. Prosecution has recorded statements of 25 witnesses, but save and except the statement of Ms. Kashmira Mandliya, wherein all that she states is that accused Nos.6 and 7 visited Flat No.301 during the day and Accused No.7 stated that the deceased will have to be taught a lesson there is nothing more than that to link the Applicant.

[10] In that view of the matter, the impugned order is clearly unsustainable. Once it is clear that there is no direct or indirect role of accused No.6 linked to the incident in question nor any evidence of his presence nor any role attributable to him in any conspiracy hatched to eliminate the deceased, Applicant cannot be asked to face trial. Even the charge-sheet is silent in so far as role of Applicant is concerned. To make a prima facie case, there has to be a believable case on the basis of some material placed on record to establish relevant nexus of Applicant to the incident. None of the ingredients are present in the present case qua Applicant. The prosecution has failed to point out any material, which would otherwise directly or indirectly establish any nexus or connection of Applicant with the incident or the offence.

[11] It is seen that Applicant is primarily charged for the offence of conspiracy. Even on that count, the only material placed before the Court is the vague and sweeping statement of Ms. Kashmira Mandliya about accused Nos.6 and 7's presence in her flat on the date of incident and nothing more. Applicant cannot be indicted on the basis of such statement.

[12] Apart from this, there is nothing placed on record to show or establish any prima facie case of conspiracy or involvement of Applicant in the indictment of assault.

[13] Hence, I am of the opinion that, since no role whatsoever is attributable to Applicant, he be discharged on the same footing as that of Accused No.5 (Jaya Lulla), who has also been discharged by this Court.

[14] Order dated 22.05.2015 is not sustainable and it is therefore quashed and set aside. Resultantly, Application filed below Exhibit "104" by Applicant before the Trial Court stands allowed. Accused No.6 i.e. Applicant before me stands discharged.

[15] Criminal Revision Application stands allowed in terms of prayer clause (1) which reads thus:-

"(1) The Orders passed by the LD Session Judge Session Court Vasai Dist Palghar dated 22/05/2015 on the discharge Application of the Applicant Accused after taking into consideration the legality proprietary and correctness of the same be quashed and set aside."

[16] Criminal Revision Application is allowed and disposed.

[17] Interim Application No.1054 of 2020 is also accordingly disposed as it no longer survives

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2025(1)MCRJ46

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Jitendra Jain]

Writ Petition (L) No 32974 of 2024 **dated 03/12/2024**

Renew Era Llp

Versus

Union of India & Ors

RE-EXPORT COMPLIANCE

Customs Act, 1962 Sec. 117 - Re-Export Compliance - Petitioner sought release of goods for re-export pursuant to an adjudication order, alleging Respondents obstructed compliance - High Court observed that petitioner's compliance with order-in-original, including penalty payments, entitled them to re-export goods - Directed Respondents to release goods within 15 days of payment, overriding 90-day limit in original order due to procedural delays not caused by petitioner - Clarified that unrelated penal proceedings under Sec. 117 Customs Act may proceed independently without hindering re-export process - Petition allowed

Law Point: Administrative adherence to adjudication orders must facilitate compliance without unreasonable delays or linkage to unrelated issues, ensuring lawful entitlements are upheld.

Acts Referred:

Customs Act, 1962 Sec. 117

Counsel:

Ashwini Kumar, Shubham T Waphare, Abhishek B Godse, Neeta Masurkar, Abhishek Mishra

JUDGEMENT

[1] Heard learned counsel for the parties.

[2] Rule. The Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

[3] The Petitioner seeks the following substantive relief by instituting this petition in terms of prayer clause (a):-

> "(a) That this Hon'ble Court be pleased to call for the records of proceedings and issue a writ of certiorari or any other appropriate writ to quash the letter F. No.CUS/APR/S49/1010/2024-Gr 2 and 2 (A-B)-O/oCommr-CUS-Nhava Sheva-I dated 15.10.2024 issued by the Respondent No.5 and issue a direction or order directing the Respondent No.3, 4 and 5 to cause release of the goods for re-export in terms of Order-in-Original No.679/2024-25/ADC/Gr.2 (AB)/NS-I/CAC/JNCH dated 02.08.2024 passed by the Additional Commissioner of Customs, Gr. II (A-B), NS-I, JNCH, Nhava Sheva;"

[4] The operative portion of the Order-in-Original (O-I-O) dated 2 August 2024 reads as follows: -

> "(i) I hereby reject the declared classification of the goods classified under CTH 25182090 imported vide Bill of Entry No.7663694 dated 26.02.2022, found to be "Aluminum Dross" and order to re-assess the above mentioned Bill of Entry under CTH26204010.
>
> (ii) I reject the declared reasonable value of the goods of Rs.37,55,779,28/- under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, imported vide Bill of Entry No.7663694 dated 26.02.2022, found to be "Aluminum Dross" and re-determined it at Rs.51,06,726.70/- (Rupees Fifty One Lakhs Six Thousands Seven Hundred Twenty Six and Paise Seventy Only) under Rule 9 of the said Valuation Rules.
>
> (iii) I order confiscation of the goods covered under Bill of Entry No.7663694 dated 26.02.2022 and having re-determined value of Rs.51,06,726.70/- (Rupees Fifty One Lakhs Six Thousands Seven Hundred Twenty Six and Paise Seventy Only) under Sections 111(d) and 111(m) of the Customs Act, 1962. **However, I give an option to the importer to redeem the said goods on payment of redemption fine of Rs.1,50,000/- Rules (One Lakh Fifth Thousand Only) under Section 125(1) of the Customs Act, 1962 for the purpose of re-export only within 90 days of this order as per Rule 15(2) of the Hazardous and other Water (Management and Transboundary Movement) Rules, 2016.**
>
> (iv) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the Importer M/s. Penewere LLP under section 112(a) of the Custom Act, 1962, for the reasons deliberated in Para 32.

(v) I also impose a penalty of Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri Nilesh Ulhas Sinalkar, Partner at M/s. Renewera LLP under Section 112(a) of the Custom Act 1962, for the reasons deliberated in Para 32.

(vi) I also impose a penalty of Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri Nilesh Ulhas Sinalkar, Partner at M/s. Renewera LLP under Section 114AA of the Custom Act 1962, for the reasons deliberated in Para 32.

(vii) I also impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on Customs Broker M/s. Govindji Kanji & Co. under Section 112(a) of the Custom Act 1962, for the reasons deliberated in Para 33."

[5] On instructions, the learned counsel for the Petitioner states that the Petitioner will pay the amounts referred to in the operative portion of the O-I-O dated 2 August 2024 to the concerned Respondents within 15 days. This statement is accepted. He states that the authorities repelled all earlier efforts to pay and reexport by referring to extraneous issues.

[6] Upon making the payments in terms of the above statement and the operative portion of the O-I-O dated 2 August 2024, the concerned Respondent will immediately release the goods to enable the Petitioner to re-export the same. This is consistent with clause 34(iii) of the O-I-O dated 2 August 2024. The goods must be released, and re-export facilitated within a maximum period of 15 days from the Petitioner making the payments in terms of the above.

[7] The concerned Respondent must not now rely on the 90-day time limit in paragraph 34(iii) of the O-I-O dated 2 August 2024. This is because we find that the Petitioner was pursuing a matter with the Respondent, and for no fault on the Petitioner's part, the Petitioner was not permitted to exercise the option of re-export. The timeline now set out by us will govern the payment of amounts/fines and re-export of the goods.

[8] Insofar as the communication dated 15 October 2024 (Exhibit-J on page 110) is concerned, the issue raised therein must not be linked to implementing the O-I-O dated 2 August 2024. Ms Masurkar agreed that it was an independent issue. Still, she requested this court clarify that the respondents could pursue the independent issue raised in the communication without being bogged down with this order. We clarify accordingly.

[9] However, all contentions of the Petitioner and the Respondents regarding the proposed penal action under Section 117 of the Customs Act, 1962, are kept open. All that we clarify is that the concerned Respondent must not delay the implementation of the O-I-O dated 2 August 2024 because of the communication/notice dated 15 October 2024 since it was admitted that this issue was independent.

[10] The Rule in this petition is made absolute in the above terms without any cost order. All concerned to act on an authenticated copy of this order

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2025(1)MCRJ49

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Revision Application No 437 of 2002 **dated 02/12/2024**

Jayesh Natwarlal Shah; Nawaz Samsuddin Pathan

Versus

State of Maharashtra

CHEATING THROUGH INVESTMENTS

Indian Penal Code, 1860 Sec. 34, Sec. 420 - Code of Criminal Procedure, 1973 Sec. 397 - Cheating Through Investments - Revision Applicants challenged conviction for cheating under Sec. 420 IPC involving fraudulent investment schemes - Prosecution established guilt using testimonies of victims and documentary evidence including receipts and agreements - Trial Court convicted applicants for inducing public to deposit money under false pretenses - Appellate Court upheld conviction finding evidence adequate to establish deception and misappropriation - High Court affirmed findings observing both Courts adopted disciplined reasoning and there was no illegality or perversity - Revision dismissed

Law Point: Fraudulent inducement to invest under false pretenses constitutes cheating under Sec. 420 IPC; findings of trial and appellate courts will not be disturbed without evidence of procedural errors or misapplication of law.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 420

Code of Criminal Procedure, 1973 Sec. 397

Counsel:

Brenda Dsouza, Manisha R Tidke

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Ms. D'Souza, learned Appointed Advocate for the Applicants and Ms. Tidke, learned APP for the State.

[2] The present Criminal Revision Application takes exception to the twin judgments of the learned Trial Court and the learned Appeal Court convicting and sentencing the Revision Applicant - Original Accused No.1 for offence punishable under Section 420 r/w. 34 of Indian Penal Code and sentencing him along with the Original Accused No.2 to suffer Rigorous Imprisonment for three months and pay a fine of Rs.5,000/- each and in default to undergo R.I. for one month.

[3] The facts in the present case are narrow, but relevant. Revision Applicant-Jayesh Natwarlal Shah along with his partner in crime viz. Nawaz Samsuddin Pathan, were charge-sheeted as Accused Nos.1 and 2 for the offence punishable under Section 420 r/w. 34 of IPC. Both accused Nos.1 and 2 prior from 13 June, 1994 started a partnership firm called Vishakha Investments & Financiers by publishing newspaper advertisements in Gujarati Newspaper called as 'Gujarat Samachar' and Marathi Newpaper 'Deshdoot' in the name and style of Vishakha Investments & Financiers, calling upon the public at large to deposit advance money in their firm so that the firm can advance loans at the reasonable rate of return by interest. Insofar as the present Complainant is concerned, he approached the accused some time on 20 January, 1995 and expressed his desire to avail a loan of Rs.5,00,000/- He was called upon to deposit an amount of Rs.35,000/- as advance amount to process his loan. He deposited an amount of Rs.35,000/- and issued receipt dated 20 January, 1995, which was in the name of Vishakha Investments. When the Complainant went to the office of Vishakha Investments in February, 1995 for inquiring about his loan amount, he found that the accused had shut their firm and the said office premises was occupied by some third party. The First Informant-Complainant then filed a complaint with the V.P. Road Police Station on 22 February, 1995.

[4] Prosecution led the evidence of three witnesses viz. PW-1- the First Informant-Complainant, who was duped for Rs.35,000/- and PW-2 one Mr. Jayesh Ulhani, who was similarly duped by the accused like the Complainant for depositing several amounts. In fact, insofar as PW-2 is concerned, he has made multiple investments with the accused i.e. with the Accused's Firm - Vishakha Investments and he was issued three separate sets of receipts by Vishakha Investments along with a declaration and an agreement. PW-3 is the Investigating Officer. The evidence of PW-1 pertained to the transaction in question for Rs.35,000/- but the evidence of PW-2 was in much detail highlighting the role of accused by inducing him to investment money in Vishakha Investments, but without giving him any returns. The learned Trial Court on the basis of the above facts and the investigation done by the prosecution, answered the case of the prosecution in the affirmative and held that the prosecution has proved its case beyond all reasonable doubts, holding the accused having committed offence under Section 420 r/w. 34 IPC.

[5] When the reasons given by the learned Trial Court in paragraph 6 onwards are perused, it is seen that evidence of the twin prosecution witnesses viz. PW-1 and PW-2 has been accepted by the learned Trial Court in indicting and convicting the accused. The fact of accused having received the amount from PW-1 and PW-2 as delineated in the prosecution case has not been denied by him. Neither the receipts issued by the accused (Revision Applicants) in the name of Vishakha Investments are not denied and all receipts are produced in evidence. The evidence of PW-2 Mr. Jayesh Ulhani has been accepted by the learned Trial Court, inter alia, on the basis of the receipts issued by accused on behalf of the Vishakha Investments & Financiers as also the

multiple documents relating to loan proposals which were all taken on record and marked as Exhibits P-1 to P-3. On the basis of the aforesaid documents exhibited below PW-1 to PW-3 , learned Trial Court opined that prosecution proved the guilt of the accused. The ingredients of cheating as envisaged under Section 420 IPC stood fully proved on the basis of prosecution evidence which was duly corroborated by substantial documentary evidence placed on record. The original accused filed Criminal Appeal No. 148 of 2001 before the Sessions Court, which considered the case of the prosecution. It relied heavily on the documentary evidence viz. documents exhibited at P-5 to P-8 which form part of the evidence considered by the trial Court and upheld the adjudication and conviction awarded by the trial Court and rejected the defence case.

[6] I have perused both the judgments with the able assistance of the learned appointed Advocate Ms. D'Souza and learned APP. Though Ms. D'Souza has made submissions to consider the case of the Revision Applicants and show leniency, I am not inclined to accept the said submissions, in view of the fact, the Revision Applicant along with his partner in crime viz. Original Accused No.2 was fully involved in various transactions carried out by them between 11 June, 1994 and the date of filing of the present complaint on 22 February, 1995. Further substantial oral and documentary evidence has been placed on record which is found to be adequate enough to indict and convict the Accused for the offence committed under Section 420 IPC.

[7] Learned APP has in support of the twin judgments submitted that, both the Courts below have made a reasonable approach in deciding the matter by considering the oral and documentary evidence on record which proves the guilt of the accused and hence, no interference is warranted under the revisionary powers of this Court under Section 397 Cr.P.C.

[8] Unless there is any illegality or perversity in the decisions passed by the Courts below, the power under Section 397 Cr.PC cannot be utilized for disturbing the said judgments. On reading of both the judgments passed by the Courts below, I am of the opinion that a disciplined exercise has been undertaken by the Courts in adjudicating the case of the prosecution. Rather this is one such case where the prosecution has proved its case beyond all reasonable doubts on the basis of oral evidence of two prosecution witnesses viz. PW-1 and PW-2 who were the victims of the crime first hand and the documentary evidence produced on record.

[9] In that view of the matter and in view of the above observations and findings, I do not see any reason for disturbing the twin judgments passed by the Courts below. The judgment and order dated 11 September,2002 passed by the Sessions Court in Criminal Appeal No. 148 of 2001 is upheld. Conviction of both the Applicants stands upheld. Their Bail bonds stand cancelled.

[10] Criminal Revision Application stands dismissed.

[11] In the present Criminal Revision Application, Ms.Brendon D'Souza learned Advocate is appointed through the Legal Aid Services Committee, High Court, Mumbai. She has ably assisted the Court. Her professional fee quantified as per the Rules be paid to her by the High Court Legal Aid Services Committee, Mumbai, within a period of two weeks positively upon a server copy of this order/judgment being presented by her to the Committee along with her Application in accordance with law

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2025(1)MCRJ52

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Revision Application No 199 of 2002 **dated 02/12/2024**

Ravindra Waghu Jadhav

Versus

State of Maharashtra

CRUELTY ALLEGATIONS REDUCED

Indian Penal Code, 1860 Sec. 498A - Code of Criminal Procedure, 1973 Sec. 397 - Cruelty Allegations Reduced - Revision Applicant convicted under Sec. 498A IPC for cruelty towards wife based on allegations of ill-treatment and demand for dowry - Trial and Appellate Courts relied on medical certificates and testimonies of prosecution witnesses - High Court noted discrepancies in evidence and procedural lapses such as absence of examining medical officer - Reduced sentence from three months' rigorous imprisonment to 12 days already served - Applicant directed to pay fine within two weeks or serve additional imprisonment - Bail bond - Sentence Modified

Law Point: In criminal revisions, sentencing may be reduced where procedural lapses and discrepancies in evidence exist, provided applicant has served part of sentence and reconciled with complainant.

Acts Referred:

Indian Penal Code, 1860 Sec. 498A

Code of Criminal Procedure, 1973 Sec. 397

Counsel:

Sonia S Miskin, D S Krishnaiyar

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Ms. Miskin, learned Appointed Advocate for the Applicant and Ms. Krishnaiyer, learned APP for the State.

[2] This Revision Application is filed by the Applicant (husband) to challenge the Judgment and Order passed by the Sessions Court in Appeal upholding the sentence and conviction of the Applicant under Section 498A of the Indian Penal Code,1860 and convicting and sentencing the Appellant to undergo Rigorous Imprisonment for 3 months and to pay fine of Rs.1000/-, in default to undergo R.I. for 15 days. Though there are concurrent judgments, which are before me, the learned Advocate Ms. Miskin appointed by this Court to represent and espouse the cause of Applicant, has taken me through the record of the case.

[3] Briefly stated, Revision Applicant was working as Engine Driver in the Indian Railways. He married the First Informant-Complainant (wife), who has deposed in the trial as Prosecution Witness No.1 and three children are born out of the wed-lock. Today, Applicant before me is 67 years old whereas the wife - Minabai is 60 years old.

[4] Before I advert to the merits of the matter, it would be pertinent to refer to a letter / communication dated 1st December, 2024 addressed by the wife viz. Minabai to this Court. It is stated in the said letter that at present the Applicant, she herself along with her three children are living happily together. Perusal of the record shows that one of the reasons rather allegation considered by the Trial Court and upheld by the Sessions Court while passing the twin impugned judgments was the relationship of Revision Applicant with another person (called Maria). In the letter addressed to the Court, the First Informant-Complainant has informed the Court that the said person called Maria expired long back, pursuant to which, both parties viz. Applicant and First Informant-wife settled their differences and since a long time they have been living happily together. In the letter, First Informant - wife has informed the Court that since the year 2010 until today they have been residing together thereafter. Revision Application will have to be determined on its own merits considering the twin judgments passed by both the Courts below, considering that this was also one of the principal allegation which led to the filing of complaint under Section 498A IPC by Applicant's wife against him.

[5] The judgment of the Trial Court dated 14.06.2001 is appended at page No. 38. Complaint was lodged by wife (PW-1) against Revision Applicant on 13.03.1993. Due to the bad vices of the Applicant, she had to approach the law enforcement agency against the ill-treatment meted out to her by Applicant. The charge of First Informant-wife against Applicant was for treating her with cruelty and demanding dowry amount of Rs. 50,000/-. Charge under Section 498A IPC was framed below Exhibit - 8 on 17.06.1999. In defence, Revision Applicant stated that even at the time of filing of complaint, parties were married for more than 20 years and that they have three children, but only due to the instigation by relatives, false complainant was lodged by his wife against him. Prosecution examined 7 witnesses in the trial and it is seen that except PW-6 and PW-7, the other 5 witnesses are the relatives of first informant - wife - Complainant who are her father, her brothers and her two sons. The principal charge as can be seen according to PW-1 was the Applicant ill-treated her after consuming

liquor at the instigation and the influence of the third person in their life viz. Ms. Maria. What is important to note are the depositions of the two sons of the parties before me. Ganesh, one of the son who is PW-3 has deposed that as far as he remembered all that Applicant did was to consume liquor and occasionally beat the Complainant and the children. However, due to his deposition that except for consuming liquor he had no other bad habits, the trial Court declared him hostile. Further deposition of the elder son Sandeep - PW-4 was also on similar lines. However, depositions of both sons reveals one fact that both of them started living separately once they had grown up and therefore, their evidence could not have been accepted by the learned Trial Court to determine the charge of cruelty made by their mother. There are no set of facts which are pleaded to determine the charge of cruelty or threat given by Revision Applicant demanding from the First Informant - wife - Complainant to bring Rs.50,000/- from her father and/or transfer the flour mill belonging to her father in his name. Essentially it is seen that because of the relationship of Applicant with the third person viz. Ms. Maria, there were issues between the parties. It is seen that after their marriage, both Revision Applicant and the First Informant - wife were together for almost 20 years until the present issue and dispute between the parties surfaced. The Investigating Officer has deposed that there was a incident of FIR lodged against the Applicant 4/5 years back for ill-treating the First Informant - wife under the influence of liquor. Save and except this statement, nothing is placed on record to prove the same. The prosecution case was accepted by the learned Trial Court and Revision Applicant was convicted for offence punishable under Section 498A and sentenced to suffer R.I. for three months and pay fine of Rs.1000/- and in default to undergo further R.I. for 15 days. The said judgment was considered by the learned Sessions Court in Criminal Appeal No. 55 of 2001 and in view of the reasons given in paragraph 9 onwards, judgment of the Trial Court was upheld and appeal was dismissed. It is pertinent to note that in the evidence of the prosecution witnesses, there were clear omissions and additions which have been noted by the Trial Court while analyzing the reasons and also by the learned Appellate Court in paragraph No.16 of the impugned judgment. However, despite the same, both Courts below have come to the conclusion that the available evidence was corroborated by medical evidence which was placed before Court in the form of injury certificate an of incident of beating Complainant on 03.04.1999 and 12.04.1999. It is seen that those injury certificates which have been used to corroborate the evidence on record to fortify the case of prosecution were infact issued three days after the date of the incident. This fact has been noted by the Appellate Court, but it has been left at that itself without concluding on the same. Therefore interference of this Court under Section 397 of Cr.PC is called for. That apart, the concerned doctor/medical officer was not examined by the prosecution and this fact is one of the aspect which ought to have weighed with the Courts below. Barring the aforesaid discrepancies, omissions and additions in the prosecution case, the rest of the case of the prosecution has been

accepted by the learned Trial Court and upheld by the Appellate Court. The prosecution evidence relied upon interested witness and was undoubtedly given in favour of the First Informant. Undoubtedly some incidents took place, inter alia, leading to filing of the complaint by the First Informant - Complainant.

[6] It is seen that one of the reason leading to the incident was the addiction of Revision Applicant to liquor. The evidence of PW-1 i.e. First Informant-wife also cannot be disbelieved in its entirety because she has narrated the reasons for leading to the incident in question.

[7] I am informed that Revision Applicant has undergone 12 days of sentence after which he has been released on bail.

[8] Considering the evidence before the Trial Court and the consideration of the said evidence by the Trial Court and the Appellate Court while passing the twin judgments of conviction and sentencing the Applicant, I am of the view that in view of the omissions, additions and discrepancies and the medical evidence in the form of injury certificate, the sentence which has been suffered by the Revision Applicant of 12 days is adequate to uphold the adjudication and fine awarded by the learned Trial Court and upheld the learned Appellate Court.

[9] In that view of the matter, sentence awarded by the learned Trial Court for three months' R.I. stands substituted by the sentence of 12 days which has already been undergone by the Applicant. Insofar as fine of Rs.1,000/- is concerned the Revision Applicant is directed to pay the said fine Rs.1,000/- within two weeks of the uploading of this judgment and in default of non-payment of fine, he shall undergo R.I. for 15 days.

[10] The Revision Applicant is before me. He is directed and explained in Marathi language about the passing of this judgment and he has agreed to pay a fine amount of Rs.1,000/-. He has informed the Court that he is now a retired employee -pensioner of the Indian Railways and is happily residing with his wife and two children. He would also inform the Court that his wife is extremely sick and bed-ridden due to a serious medical ailment and he is now taking care of her.

[11] Bail bond of the Applicant stand cancelled.

[12] In the present Criminal Revision Application, Ms. Miskin learned Advocate is appointed through the Legal Aid Services Committee, High Court, Mumbai. She has ably assisted the Court. Her professional fee quantified as per Rules be paid to her by the High Court Legal Aid Services Committee, Mumbai, within a period of two weeks positively upon a server copy of this order/judgment presented by her to the Committee along with her Application in accordance with law.

[13] With the above directions, Revision Application stands partially allowed

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2025(1)MCRJ56

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Urmila Joshi-Phalke]

Criminal Appeal No 566 of 2021 **dated 29/11/2024**

Vishal S/o Badrinath Wadekar

Versus

State of Maharashtra; Priyamwada D/o Anupkumar Choudhary; Anupkumar S/o Krushnakumar Choudhary

DISCHARGE APPLICATION

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Sec. 14A - Discharge Application - Appeal under Section 14A of Atrocities Act challenging discharge order of accused under Sections 3(1)(u) and 3(1)(v) - Allegation based on accused's WhatsApp messages expressing views on caste reservation and supposed humiliation of Scheduled Caste complainant - Trial court discharged accused citing lack of prima facie case and absence of intent to promote enmity or hatred - Appellant contended prima facie material suffices for framing charges - High Court observed that messages conveyed opinions on reservation system without any evidence of promotion of enmity, ill-will, or hatred against Scheduled Castes - Held that discharge order does not warrant interference as allegations fail to satisfy essential ingredients of offences - Appeal Dismissed

Law Point: Prima facie evidence must establish essential ingredients of offences under Atrocities Act; personal expressions not aimed at promoting community-wide enmity or hatred do not constitute such offences.

Acts Referred:

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3, Sec. 14A

Counsel:

S Sonwane, Nitin Autkar, R K Tiwari

JUDGEMENT

Urmila Joshi-Phalke, J.- [1] The present appeal is preferred under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act) challenging order dated 5.8.2021 passed by learned Special Judge under the Atrocities Act whereby respondent Nos.2 and 3 are discharged.

[2] Heard learned counsel Shri S.Sonwane for the appellant (complainant), learned Additional Public Prosecutor Shri Nitin Autkar for respondent No.1/State, and learned counsel Shri R.K.Tiwari for respondent Nos.2 and 3 (accused persons).

[3] Admit.

[4] Respondent Nos.1 and 2 are arraigned as accused in connection with Crime No.477/2019 for offences under Section 3(1)(u) and 3(1)(v) of the Atrocities Act on the basis of a report lodged by the complainant. As per allegations, he got acquaintance with accused No.1, who at the relevant time was taking education. Love affair was developed between them and they performed marriage in Koradi Temple. However, they kept the said marriage secret and not disclosed to their family members. It is alleged that when accused No.1 came to know that the complainant belongs "Chambhar Community", she suddenly changed her mind and denied to continue with relationship with the complainant. There were exchange of messages between the complainant and accused No.1 on WhatsApp and and accused No.1 expressed her views over Caste Based Reservation System. It is alleged that accused No.1 humiliated and insulted the complainant by written words and promoted feelings of enmity, hatred, and ill-will against members of Scheduled Castes and the Scheduled Tribes. On the basis of the said report, police registered the crime against accused No.1 and her father accused No.2.

[5] After investigation, the Investigating Officer filed chargesheet. After filing of the chargesheet, accused persons preferred an application contending that even taking into consideration allegation at its face value, the same do not constitute any offences or make out a case against them under section 3(1)(u) and 3(1)(v) of the Atrocities Act and prayed for their discharge.

[6] The application is strongly opposed by the State as well as the complainant. After hearing both sides and perusing investigation papers, learned Judge below held that literature published nowhere discloses that there was any attempts to promote any enmity or hatred or ill-will between two communities and to humiliate Scheduled Castes and the Scheduled Tribes and as such learned Judge below discharged accused persons.

[7] Being aggrieved and dissatisfied with the same, the present appeal is preferred by the complainant on contention that messages exchanged by accused No.1 sufficiently show that she attempted to create enmity and hatred between communities. Thus, prima facie case is made out as the literature was published by her. As far as framing of the charge is concerned, there is a prima facie material and, therefore, the order discharging accused persons deserves to be quashed and set aside.

[8] Heard learned counsel for parties and perused material on record.

[9] Learned counsel for the complainant submitted that WhatsApp messages forwarded by accused No.1 itself are sufficient to show that she committed the offence by publishing material by way of forwarding messages and creating hatred. As far as framing of charge is concerned, evidence collected is not to be evaluated, but on taking it at its face value, if necessary ingredients are made out to constitute offence, charge

requires to be framed. Learned Judge below erroneously held that on its face value, no offence is disclosed and discharged accused persons.

[10] In support of his contentions, learned counsel for the complainant placed reliance on following decisions:

(1) State by Karnataka Lokayukta, Police Station, Bengaluru vs. M.R.Hiremath, 2019 7 SCC 515;

(2) State of Tamil Nadu, by Inspector or Police Vigilance and Anti Corruption vs. N.Suresh Rajan and ors, 2014 11 SCC 709, and

(3) Chitresh Kumar Chopra vs. State (Govt.of NCT of Delhi), 2010 AIR(SC) 1446.

[11] Learned Additional Public Prosecutor for the State also supported the said contentions and prayed for setting aside the order impugned in the appeal.

[12] Per contra, learned counsel for accused persons supported the order impugned and submitted that the criminal proceeding was set into motion by the complainant with an ulterior motive due to personal grudge against accused No.1. There is a delay of five months in lodging of the report. Messages sent by accused No.1 merely show sentiments or views against Reservation System and no offensive language much less in public view was used and, therefore, offence 3(i) (u) of the Atrocities Act is not made out since there was no use of words which in any manner promotes feeling of enmity or hatred or ill-will against members of the Scheduled Caste and the Scheduled Tribes. Messages were sent only to the complainant individually and, therefore, the appeal is devoid of merits and liable to be dismissed.

[13] Having heard and perused investigation papers, it reveals that there was love affair between the complainant and accused No.1. They allegedly perform secret marriage and subsequently, accused No.1 came to know that the complainant belongs to the Scheduled Caste i.e. "Chambhar Community" and, therefore, she left company of the complainant. It is alleged by the complainant that by sending message, accused No.1 created hatred as to the Scheduled Caste Community is concerned. Perusal of WhatsApp messages shows that the said messages were forwarded to accused No.1 which she has forwarded to the complainant. Even perusal of the said messages shows that messages express opinion as to the Caste Reservation System. Other messages, only reference of Scheduled Caste is mentioned. Even none of messages talks about any act on the part of accused No.2 showing that there is an attempt to create any hatred or enmity or ill-will regarding the Scheduled Caste. It is alleged that accused No.1 by words promoted or attempted to promote feeling of enmity against members of the Scheduled Castes and the Scheduled Tribes.

[14] Section 3(1)(u) of the Atrocities Act reads as under:

> **"3(1)(u)** - by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of

enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes."

[15] Thus, basic ingredients for constituting an offence under Section 3(1)(u) of the Atrocities Act are; (1) accused should not be member of the Scheduled Caste or the Scheduled Tribe and (2) accused by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes.

[16] On going through the entire material, it reveals that messages only show feelings expressed as to Caste Reservation System. Such messages nowhere show that there was any attempt to promote any enmity or hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes. At the most, it can be said that her target was just the complainant only. However, accused No.1 did not write any word which would create or promote any ill-will or enmity or hatred against members of the Scheduled Castes and the Scheduled Tribes.

[17] The Atrocities Act has been enacted to improve socio-economic condition of Scheduled Castes and the Scheduled Tribes and to protect them from various indignities, humiliation, and harassment. The Legislation, thus, intends to punish acts committed against vulnerable sections of our society for reason that they belong to particular community.

[18] While considering, whether there is a prima facie case exists or not, the court has to conduct a preliminary enquiry to determine whether narration of facts in the First Information Report discloses essential ingredients requiring to constitute an offence under the Atrocities Act.

[19] Thus, the court has to apply its judicial mind to determine, whether allegations levelled in the complaint, on a plain reading, satisfy ingredients constituting the alleged offence?

[20] In the present case, after conducting a preliminary enquiry, learned Judge below came to conclusion that ingredients are not established.

[21] It is well settled that at the stage of framing of charges, when the Magistrate or the Judge to consider the above question on a general consideration on material placed before him/her by the Investigation Officer, veracity and effect of evidence which the prosecutor proposes to adduce are not to be meticulously judged. At the stage of framing of charge or while considering discharge application, it is to be seen, whether there is a sufficient ground for proceeding against accused. "Ground" in the context, is not a ground for conviction, but a ground for putting accused on trial. It is in the trial, guilt or innocence of accused will be determined and not at the time of framing of charge and, therefore, elaborate enquiry in sifting and weighing materials is not required. It is also not necessary to delve deep into various aspects. All that the court has to consider is, whether evidentiary material, if generally accepted, would reasonably connect the accuse with the crime or not.

[22] Thus, a duty is cast on the judge to apply his/her mind to the material on record and if the court does not find sufficient material for proceeding against the accused, the accused can be discharged. On the other hand, if prima case is made out, the charge can be framed.

[23] Learned counsel for the complainant placed reliance on the decision in the case of **State by Karnataka Lokayukta, Police Station, Bengaluru vs. M.R.Hiremath** supra, wherein the Hon'ble Apex Court laid down principle that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether facts emerging from material, taken on its face value, disclose existence of ingredients necessary to constitute the offence or not.

[24] In another decision in the case of **State of Tamil Nadu, by Inspector or Police Vigilance and Anti Corruption vs. N.Suresh Rajan and ors** supra, also it is held that no mini trial is contemplated at stage of considering discharge application, but court to proceed with assumption that materials brought on record by the prosecution are true. Only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against accused. The court is not expected to go deep into the matter and hold that materials would not warrant conviction.

[25] In the light of the above settled principles, if the order impugned is perused, it is clear that expectation from the court, while framing of the charge is to consider charge against accused on a general consideration of material placed before it by the investigating agency, which was considered by learned Judge below and learned Judge below rightly came to conclusion that to constitute an offence under Section 3(1)(u) of the Atrocities Act, there is nothing even prima facie to indicate that accused No.1 attempted to promote feeling of enmity or hatred or ill-will against members of the Scheduled Castes and the Scheduled Tribes. It is just an expression by her as to the Caste Reservation System. The offence under Section 3(1)(u) of the Atrocities Act will come into play only when any person is trying to promote ill-will or or enmity or hatred against members of the Scheduled Castes and the Scheduled Tribes.

[26] For reasons stated above, the appeal is devoid of merits and deserves to be dismissed and the same is **dismissed.**

Appeal stands **disposed of**

2025(1)MCRJ61

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Appeal (St); Interim Application No 5380 of 2024; 1576 of 2024

dated 28/11/2024

Afsana W/o Sarfaraj Ahmed Patel

Versus

Sarfaraj Ahamad Mainodin Patel and Ors

CRUELTY ALLEGATIONS

Indian Penal Code, 1860 Sec. 504, Sec. 498A, Sec. 323, Sec. 506 - Cruelty Allegations - Criminal appeal filed challenging concurrent judgments acquitting accused of charges under Sections 498A, 323, 504, and 506 IPC - Appellant alleged two incidents of unlawful demands and cruelty by respondent-husband and his relatives - Evidence revealed discrepancies and lack of corroboration for allegations - Courts observed first demand related to husband's job unsupported as he was already employed - Second demand for money during marriage also found unsubstantiated - FIR filed after significant delay and testimony from prosecution witnesses lacked credibility - Trial Court and Sessions Court upheld findings dismissing prosecution case due to absence of credible evidence - High Court found no ground to interfere, dismissing appeal and affirming acquittal - Appeal Dismissed

Law Point: Mere allegations of harassment or cruelty unsupported by credible evidence and corroboration cannot establish charges under Sections 498A and related IPC provisions.

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 498A, Sec. 323, Sec. 506

Counsel:

Shaila S Zende, Manisha R Tidke

JUDGEMENT

Milind N Jadhav, J.- [1] This Criminal Appeal is directed against twin concurrent judgments passed by the trial Court dated 18th January 2019 acquitting the private Respondents and the Sessions Court in Appeal dated 15th September 2022 upholding their acquittal. The judgment of the trial Court is appended at page No.31 and judgment of the Sessions Court is appended at page No.9 of the present Appeal. Ms. Zende, learned Advocate appears for Appellant who is the first informant / Complainant aggrieved by the aforementioned twin judgments exonerating the private Respondents from the charge of offences punishable under Sections 498A, 323, 504

and 506 of the Indian Penal Code (IPC). Respondent No.1 is the husband of Appellant whereas Respondent Nos.2 to 9 are the family members / relatives of the husband.

[2] Briefly stated the Respondent No.1 (accused No.1) married with Appellant on 26th June 2011. It was a marriage culminated after a love affair between the parties. It is prosecution case that Respondent No.1 was working as teacher in Zilla Parishad school at Village Ghotage in district Solapur. He was an office bearer of the Students Federation of India Organization. It is prosecution case that Appellant was a member of the said organization where she befriended Respondent No.1 on account of various programmes conducted by the said organization and they subsequently decided to get married. It is prosecution case that P.W.3 - mother of Appellant incurred expenses of approximately Rs.3,00,000/- (Rupees Three Lakh Only) for their marriage and in addition to that Appellant was offered a 2 tola gold ring and cash of Rs.50,000/- (Rupees Fifty Thousand only) by her. Prosecution led evidence of two family members namely PW-2 and PW-3 being the mother and sister of Appellant alongwith evidence of PW-4 i.e. the Appellant herself. Allegation was to the effect that pursuant to marriage after a lapse of 9 months, Respondent No.1 and his family members treated the Appellant with cruelty by incessantly demanding the Appellant to cater their unlawful demands. There are two specific incidents which have been alleged by the complainant which find mention in the FIR lodged by her. Prosecution case under Section 498A, 323, 504 and 506 of the IPC is based on two incidents.

[3] The two incidents are dated 7th January 2012 and 18th September 2012 which are after a lapse of 7 months (first incident) and 15 months (second incident) of marriage. The first incident pertains to an alleged demand of Rs.1,50,000/- from complainant Appellant by Respondent No.1 - husband by making a telephonic call asking her to meet him personally on 7th January 2012. It is alleged that the telephone conversation / message for the Appellant to meet Respondent No.1 was received by her from the mobile phone of a lady called Ms. Asma and when Appellant inquired about her with Respondent No.1, he assaulted her on her leg by a stick and blade causing injuries on her stomach. In so far as this incident is concerned after the allegation is made, there is no corroborative evidence i.e. either medical evidence or any other evidence placed on record by the prosecution to prove this incident and also the injuries. Appellant did not report this incident. That apart the incident of demand of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) has not been proved by the prosecution by leading any evidence and this fact has found favour with both the Courts below in rejecting the case of Appellant in so far as the first incident is concerned.

[4] Before the trial Court, evidence of the prosecution witness namely PW-2, PW-3 and PW-4 who are the sister, the mother and Appellant herself who led to prove the prosecution case. One common thread which runs in the evidence of all three prosecution witnesses is that all of them have deposed that after the marriage between Appellant and Respondent No.1 atleast for the first 9 months there was absolutely no

issue between them or they had no quarrel. This deposition of the prosecution witnesses has been considered by the trial Court as against the complaint lodged on the basis of the twin incidents, since the first incident is alleged to have occurred in the month of January 2012 i.e. six and half months after the marriage between the parties on 26th July 2011.

[5] The alleged demand which is made at the time of the first incident was for the purpose of the job / recruitment of Respondent No.1. However, this fact has been negated and dismissed by both the Courts below on the basis of evidence having been placed and proven before the Court that Respondent No.1 was already working as a teacher in Zilla Parishad school prior to his marriage and therefore, making of such a demand of Rs.1,50,000/- for his job / recruitment would be unsustainable unless it is proved to the contrary by leading relevant and cogent evidence. Admittedly no evidence has been led. Mere allegation cannot be transformed into evidence and therefore, the learned trial Court and also the learned Appellate Court has considered the aforesaid issue in this context and rejected the case of prosecution in so far as the demand of Rs.1,50,000/- been made by Respondent No.1 or any of his family members as alleged by Appellant.

[6] This rejection therefore, takes us to the second demand made 15 months post marriage of the parties. This demand alleged by Appellant is by the Respondent No.1 and his family members asking her to bring an amount of Rs.1,50,000/- for his transfer from village Ghotage to some other place in Solapur. The second incident is of 18th September 2012. It is alleged by Appellant in the FIR that all private Respondents threatened to eliminate her by tagging her mouth and abusing her and also forced her to leave Respondent No.1. These two incidents are the only basis of lodging the Complaint. In between these two incidents on 17th April 2012 Respondent No.1 underwent treatment for assault on his hand by a blade by the Appellant herself and this is not denied by Appellant. It is prosecution case that this demand was made and at the same time Respondent Nos.1 to 9 assaulted and abused the Appellant. What is crucial is the fact that if such demand was made then at the time when such a demand was made in September 2012, why did the Appellant remain silent. What goes against the Appellant is that the crime was lodged much belatedly by the Appellant in the year 2014. In between the date of marriage i.e. July 2011 and 2014 there were meetings held for counselling between the parties due to their differences. However, it is prosecution case that it is only in January 2014 i.e. specifically on 7th January 2014 the Respondent No.1 forced the Appellant to leave the matrimonial house. Thereafter on 30th March 2014, Appellant attempted to return back to the matrimonial house alongwith her mother accompanying her, but at this time it is alleged by her that the mother-in-law i.e. accused No.3 abused them leading to filing of the complaint with Kudal Police Station at Awalegaon by her. It is thereafter alleged that on 12th May 2014 Respondent No.1 once again harassed and threatened Appellant and called upon

her to end their marital relationship with a Talaq which forced her to file the complainant in May 2014.

[7] The aforesaid two incidents of demand of money and also cruelty form the basis of the complaint filed by Appellant. What is crucial for the Appellant to prove according to her complaint was the abuse, harassment and illegal demand as alleged to have been made by the private Respondents. Whether the fact that mere allegation of harassment can be attributable as cruelty would depend on the facts of each case. Here facts of the case are that there is an alleged demand rather unlawful demand made for bringing an amount of Rs.1,50,000/- in January 2012 and September 2012 for a specific purpose which are clearly disproved. Evidence on harassment, abuse, any form of cruelty using force are questions of facts which have not been described by the Appellant, lest that she has proved them.

[8] The learned Courts below have considered the alleged unlawful demand from the perspective of the specific purpose alleged by the complainant herself. In the case of the first demand, the Courts have considered the fact that since Respondent No.1 was already employed as teacher in Zilla Parishad school it is not possible for him to demand the amount of Rs.1,50,000/- for procuring a job or recruitment for himself. Hence, case of the prosecution stood dismissed on the first count.

[9] In so far as the second demand is concerned there has to be cogent evidence placed on record of the alleged demand having been made and the force and harassment being caused, which is not proved. The learned trial Court has considered the chronology of the cross-examination of the Appellant who has deposed as PW-4 herself and also her own family members namely her sister and her mother. The evidence of the prosecution witnesses is that until January 2014 the association between Appellant and Respondent No.1 was normal and there were no issues. In so far as the second demand of Rs.1,50,000/- is concerned without any material evidence having been placed on record, merely the statement and version of the complainant and the two witnesses about Respondent No.1 insisting on Appellant to bring Rs.1,50,000/- for the purpose of his transfer has not been accepted by both the Courts below.

[10] The learned Courts below have considered the evidence of the prosecution and have infact opined that the evidence is with respect to the marital life of parties between July 2011 and January 2014 whereas the Complaint under Exhibit 82 has been filed for the first time in May 2014 pursuant to which FIR below Exhibit 84 is registered after investigation. The above discussion clearly shows material difference in time between the alleged date of unlawful demand made in January 2012 followed with the second unlawful demand made in September 2012 after which the FIR was registered. The learned trial Court has come to the conclusion that the allegation of the alleged incident of 7th January 2012 of the Respondent No.1 having assaulted the Appellant by a blade is unbelievable and unacceptable in view of the plea not supported by cogent evidence.

[11] In view of the evidence led by the prosecution both the Courts below have returned appropriate finding that the prosecution has proven the guilt of the accused, there are clear discrepancies and doubt with respect to the evidence and depositions of the three prosecution's witnesses on the material aspect of the twin unlawful demands which have found favour with both the Courts below. It is seen that both PW-2 and PW-3 are interested witnesses. Resultantly, learned trial Court while delivering its judgment in paragraph Nos.14 to 31 has analysed and scrutinized the evidence on record and concluded that prosecution has failed to prove its case beyond all reasonable doubts. As a result of which the learned trial Court by its judgment dated 18th January 2019 has exonerated Respondent Nos.1 to 9 from the offences alleged in the FIR dated 26th May 2014.

[12] The learned Appellate Court while dealing with Criminal Appeal No. 11 of 2019 in paragraph Nos.9 to 18 has considered the evidence at its disposal and has not found favour with the prosecution's case with respect to subjection of the Appellant to cruelty on account of any unlawful demand or for causing any voluntarily intentional hurt to the Appellant. In view of the findings returned by both the Courts below, case of the prosecution on account of Section 323 r/w. Section 498A fails miserably as having not been proved.

[13] I have perused the record of the case and the twin judgments passed by the trial Court and learned Sessions Court. I do not find any discrepancies whatsoever to cause any interference or interfere in the judgments. Hence the decision of the learned Appellate Court i.e. Court of Sessions stands upheld. Equally decision of the trial Court dated 18th September 2021 also stands upheld.

[14] Resultantly, the Appeal is dismissed. There shall be no order as to costs. In view of dismissal of the Appeal, pending Interim Application No.1576 of 2024 is disposed

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2025(1)MCRJ65

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Bharat P Deshpande]

Criminal Bail Application No 3530 of 2022 **dated 28/11/2024**

Kondiba Gunjal

Versus

Union of India; State of Maharashtra

BAIL APPLICATION

Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 37, Sec. 67, Sec. 42 - Bail Application - Applicant, accused under NDPS Act, sought bail citing prolonged custody of three years and lack of trial

progress - Prosecution relied on Section 67 statements and call records to substantiate allegations - High Court observed Section 67 statements inadmissible as evidence and noted absence of corroborative material against Applicant - Held prolonged incarceration without trial violated fundamental rights under Article 21 - Provisions of Section 37 NDPS Act not absolute bar in such cases - Bail granted subject to strict conditions including personal bond, surrender of passport, and regular attendance in trial proceedings - Bail Granted

Law Point: Prolonged incarceration without trial violates Article 21-Rigors of Section 37 NDPS Act may be relaxed if no substantial progress in trial exists and corroborative evidence is lacking.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 439

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 37, Sec. 67, Sec. 42

Counsel:

Dr Sujay Kantawala, Karan Jain, Agastya Desai, Thakker Ruju, Priyanshi Doshi, C D Mali

JUDGEMENT

Bharat P Deshpande, J.- [1] Applicant who is Accused No.2 in the complaint filed by respondent no.1 before the Special Court, preferred the present application for bail under Section 439 of Cr. PC.

[2] Heard Dr. Sujay Kantawala for applicant, Mr. Thakker Ruju for Respondent no.1 and Mr. C. D. Mali, APP for State.

[3] Learned Counsel for the Applicant would submit that present Applicant/ Accused No.2 was working as a Clearing Agent and that he is related to Accused No. 1. He submits that the Accused No.2 only help the Accused No.1 in clearing some consignment. However, he had no connection at all with respect to the drugs which are found in the said consignment.

[4] He submits that Accused No.2 is alleged to have transported the said drugs and thus except the statements recorded under Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) there is no corroborative material to implicate present Applicant with the said offence.

[5] Learned Counsel for the Applicant would further submit that though complaint is filed by NCB on 2nd February 2021 and cognizance of it was taken by the concerned Special Court on 18th April 2022, there is no progress in the matter. He submits that total 54 witnesses are disclosed in the complaint for the complainant to be examined. However, till date there is absolutely no progress in the matter though Applicant is in custody from 9th August 2021.

[6] Learned Counsel for the Applicant would submit that the Applicant has already undergone 3 years in custody and there is no chance of conclusion of the said trial in near future.

[7] Learned counsel would further submit that Section 37 of the NDPS Act will have to be considered in view of long incarceration of the Applicant without any progress in the trial. He submits that Applicant is having a right to a speedy trial and if such right is denied to him, rigors of Section 37 of the NDPS Act cannot be made applicable. He would further submit that Applicant is ready and willing to abide by conditions while granting bail as he was doing his business activity as a Clearing Agent and there is no criminal antecedents.

[8] Per Contra, Learned Special PP appearing for the NCB would submit that Accused No.1 acted as an agent for clearing the consignment and on receipt of the information from the customs, a team of the complainant visited Navkar Corporation wherein a container bearing No.INKU2267955 imported under the bill of entry dated 1st August 2020 was kept and search in presence of two panch witnesses and Accused No. 1. During the said search, 191.60 kgs of heroin was detected and seized.

[9] The learned Special PP would submit that statement of Accused No. 1 was recorded under Section 67 of NDPS Act and role of present Applicant / Accused No.2 was revealed. Accordingly present Applicant was summoned and his statement was recorded on 8th September 2020. During the recording of such statement, involvement of the Applicant was found along with Accused No.1 and other Accused persons.

[10] Learned Special PP submitted that a sample taken from the said drugs were forwarded to the laboratory and the report is received showing the presence of heroin. He submits that substance / quantity found during the search is huge and, therefore, bail should not be granted.

[11] Learned Counsel for the Applicant has placed reliance on the following decisions:

1. Judgment in case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another** passed by Apex Court in Criminal Appeal No.2787 of 2024.

2. Judgment in case of **Ankur Chaudhary Vs. State of Madhya Pradesh** passed by Apex Court in Special Leave to Appeal (Crl.) No.4648 of 2024.

3. Judgment in case of **Dheeraj Kumar Shukla Vs. State of Uttar Pradesh** passed by Apex Court in Special Leave to Appeal (Crl.) No.6690 of 2022.

4. Judgment in case of **Mahmood Kurdeya Vs Narcotic Control Bureau** passed by Apex Court in Criminal Appeal No.1570 of 2021.

5. Judgment in case of Mohd. Muslim alias Hussain Vs State (NCT of Delhi),2023 SCCOnLineSupremeCourt 352 passed by Apex Court, .

6. Judgment in case of **Surjit Singh @ Kala Vs State of Punjab** passed by High Court of Punjab and Haryana on 09.11.2023 in CRM-M No.32558 of 2023.

7. Judgment in case of **Vijay Mohan Pawara Vs. The State of Maharashtra** passed by High Court of Bombay on 24.06.2024 in Bail Application No.433 of 2024.

8. Judgment in case of Gudipati Subramaniam Vs. Union of India and Another,2024 SCCOnlineBom 1350 passed by High Court of Bombay.

9. Judgment in case of **Shashikant Prabhu Vs. Harshad Chandrakant Gawde @ Harry** passed by High Court of Bombay on 21.12.2020 in Bail Application No.422 of 2024.

[12] Perusal of the complaint filed before the Special Court would clearly disclose that a container bearing No.INKU2267955 imported under the bill of entry dated 1st August 2020 was detected by the Customs officers and found some creamish colour powder with pungent smell. The Customs officer suspected that it could be a narcotic drug and accordingly intimation was given to NCB/DRI. Accordingly, a team was constituted for conducting the raid after complying the provisions of Section 42 of the NDPS Act. Raiding team along with panch witnesses reached the Navkar Corporation at CFS Raigad at around 11:15 p.m. on 7th August 2020. After identifying the container in presence of panchas and Accused No. 1, a joint examination was carried out. The creamish colour powder was recovered from the wooden structure which was found testing positive for heroin. In all, various gunny bags were found containing such creamish colour powder totally weighing 191.60 kgs. Entire contraband was attached under the panchnama and seized. Accused No.1 was then taken into custody and his statement was recorded.

[13] Accused No.1 during his statement under Section 67 of NDPS Act discloses that he is customs house agent of the consignment and a partner in the customs broker from M/s M.B. Shipping and Logistics Services. He stated that Accused No.2, i.e., present Applicant accepted the job of clearance of import consignment of M/s. Sarvim Exports, Delhi. The present Applicant/Accused No.2 is the partner in the said broker firm M/s M.B. Shipping and Logistics Services. It also revealed from his statement that Accused No. 4 contacted Accused No.2 claiming to be head of M/s Servim Exports and requested them for clearance of import consignment. For clearance of such consignment, Accused No.4 used to make payment through bank accounts from Delhi. The statement also revealed that Accused No.1 received the concerned import documents for the import consignment of M/s Sarvim Exports including bill of lading, packing list, country of origin etc., on his mobile phone from Accused No.2/Applicant.

[14] Complaint further reveals that Accused No.2/Applicant was then summoned by the complainant and his statement was recorded under Section 67 of NDPS Act on 8th September 2020. During that statement, present Applicant discloses about his mobile phones and that he is working in M/s ARD Logistics as customs house agent and doing customs docks clearance work. He also stated that Accused No.1 is his cousin and partner in M/s M. B. Shipping and Logistics Services. He then discloses

that Accused No.4 contacted him somewhere in June 2019 enquiring about clearance of import of Mulethi (Liquorice Roots) from Afghanistan. Accused No.2/Applicant agreed to clear the imported consignments of Accused No.4.

[15] Mobile phones of present Applicant were attached and CDR/SDR were called wherein it is found that Accused Nos.1 and 2 were in contact with each other and even the documents were exchanged on mobile phones.

[16] Complainant further submits that Accused Nos.3, 4 and 5 were then arrested. However, Accused No.4 expired after the complaint was filed before the Trial Court.

[17] It is there for clear that a case of the complainant though show that a contraband was found in the said consignment for which Accused No.1 has acted as a Clearing Agent, the involvement of Accused No.2 is on the basis of statement made by Accused No.1 under Section 67 of NDPS Act.

[18] Similarly the contention of the complainant as far Accused No.2/Applicant is concerned is again based on statement under Section 67 of NDPS Act. It is no doubt true that there are call details and WhatsApp records which show that Accused No.2/Applicant was in contact with Accused Nos.1 and 4 and documents for clearance of the consignment was forwarded by the present Applicant to Accused No. 1.

[19] As far as confessional portion recorded under Section 67 of the NDPS Act is concerned, it is now well settled and as held by the Apex Court in the case of **Toofan Singh Vs. state of Tamilnadu** that statement under Section 67 of NDPS Act cannot be used as confessional statement in the trial of an offence under the provisions of the NDPS Act since the officers who are invested with powers under Section 53 of the NDPS Act are police officers within the meaning of Section 25 of the Evidence Act and as a result of which any confessional statement made to such police officer would be barred under the provisions of Section 25 of the Evidence Act and cannot be taken into account in any inquiry or trial. Thus it is clear that any statement of the present Applicant recorded under Section 67 of the NDPS Act cannot be used against him as confession or admission as the case may be for the purpose of trial. Similarly, statements of other Accused persons recorded under Section 67 of the NDPS Act, also cannot be used against the Applicant.

[20] Apart from such so called confessional statement, material which has been relied upon in the complaint qua the present Applicant is only in connection with the call details of the Applicant while using his two mobile phones with that of Accused No.1 and forwarding of some documents on WhatsApp chat to Accused No.1 for clearance of consignment.

[21] It is the contention of the Applicant and also mentioned in the complaint filed by respondent that Applicant is Acting as a Clearing Agent. Thus possessing documents of a consignment for the purpose of processing of custom clearance, is but natural.

[22] Admittedly the record show that present Applicant and Accused No. 1 were partners in a firm dealing with clearing of the consignment. It is also claimed that Accused No.1 and the present Applicant are related with each other. In such circumstance, phone calls between Accused Nos. 1 and 2 are but natural, on personal front as well as on business transaction.

[23] Sending the documents of a consignment for clearance to Accused No.1 through WhatsApp chat cannot be suspected as tried to be canvassed on behalf of Respondents. It is also necessary to note that since the Applicant was Acting as Clearing Agent, he is bound to receive his fees for the purpose of clearing of the consignment. The transactions which have been pointed out on behalf of the respondent are only with regard to charge of fees with regard to clearance of the consignment. Such amounts are only in few thousand and not having any suspicion with regard to the contention of dealing in drugs.

[24] The Clearing Agent or a person who is facilitating the agent to clear the consignment is not supposed to know an exact material which is found in the said consignment though such bills required to be mentioned about it. Admittedly such consignment was received from a foreign country and it requires customs clearance since the customs authorities suspected some foul play, they alerted the DRI and accordingly raid was conducted.

[25] Applicant was not present when the consignment was opened and search was carried out. It was Accused No.1, who was present during the search of the said consignment and he was responsible for clearing the said consignment though claimed for and on behalf of Accused Nos.2 and 4. Thus the material which has been collected by the complainant qua the present Applicant is not enough to sufficiently corroborating the case and existence of the call details and forwarding of the bills to Accused No.1 cannot be considered as presumption of the knowledge of the Applicant about the drugs concealed in the said consignment.

[26] The case so far put forth against present Applicant would go to show that it mostly rest on the statement under Section 67 of the NDPS Act and there is no corroborative evidence to substantiate the avernments in his statement so as to detain him further. Hence the embargo under Section 37 of the NDPS Act would not cause any impediment in the present matter.

[27] Besides, Applicant was arrested on 9th August 2021 and since the last 3 years he is in custody. Complaint would go to show that there are 54 witnesses which the complainant would be examining during the trial. It is submitted that till date even the charge is not framed and thus there is no possibility of concluding of the trial in the near future.

[28] In the case of Javed Gulam Nabi Shaikh (supra), the Apex Court while deciding the matter on 3rd July 2024 observed that long incarceration clearly defeat the fundamental right under Article 21 of the Constitution to have a speedy trial. While

placing Reliance in the case of Union of India Vs. K. A. Najeeb,2021 3 SCC 7131, it was observed that even the matter under UAPA would be considered if there is inordinate delay in conducting the trial. Similarly in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation**, 2022 10 SCC 51, the Apex Court has observed that prolong incarceration and inordinate delay engaged in the conclusion or the trial would certainly affect the right of Accused of speedy trial and in such circumstance, Section 37 of NDPS Act or such provisions under the Special Acts would not be an impediment to grant bail. The Apex Court further observed that the person seeking bail is still an Accused and not a convict and thus he is entitled for a speedy trial and if it is not possible to decide his case as enshrined under Article 21 of the Constitution and if he is kept inside without any progress in the matter, such Accused is certainly entitled to be released on bail.

[29] Similar observations are found in the case of Ankur Chaudhary (supra) by the Apex Court which consider the embargo under Section 37 of the NDPS Act. The Apex Court found that failure to conclude trial within a reasonable period resulting in prolong incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India and as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act could be considered.

[30] In the case of Dheeraj Kumar Shukla (supra) the Apex Court granted bail to the Accused even though he was found with the commercial quantity and since there is no progress in the trial.

[31] In the case of Mohd. Muslim alias Hussain (supra) the Apex Court while dealing with Section 37 of the NDPS Act observed that the court would look at the material in a broad manner and reasonably see whether the Accused's guilt may be proved. It does not call for meticulous examination of the material collected during investigation.

[32] Coming back to the matter in hand, it is no doubt true that a huge commercial quantity of heroin was found in the container, but except statement under Section 67 of NDPS Act which is otherwise not admissible in evidence as far as admissions/ confessions of the present Applicant are concerned, there is hardly any corroborative evidence. Thus the provisions of Section 37 of the NDPS Act would not be considered as an embargo in the present matter even though commercial quantity was detected and seized.

[33] Applicant is in custody from last 3 years and till date there is absolutely no progress in the said matter. The conclusion of trial in near future is again a remote possibility. Accordingly, I am of the considered opinion that the Applicant is entitled for the bail in connection with the present matter. However, on strict conditions.

[34] Bail application is therefore allowed. Applicant shall be released on furnishing a personal bond of Rs.1 Lakh with two solvent sureties in the like amount to the satisfaction of the Learned Special Court and on the following conditions:

(1) Applicant shall not tamper with the prosecution witnesses directly or indirectly or showing inducement, threat or promise to any person acquainted with the fact of the case so as preclude him from disclosing the fact to the court.

(2) Applicant shall not leave India without prior permission of the Learned Special Court.

(3) Applicant shall deposit his passport, if any, with the Learned Trial Court.

(4) Applicant shall attend the Trial Court proceedings regularly and shall not ask for exemption unless it is necessary to do so.

[35] The observations made in the above order are only restricted to grant of bail to the Applicant/Accused No.2 and based on a material placed before this court.

[36] Bail Application stands disposed of in the above terms

2025(1)MCRJ72

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Sandipkumar C More]

Criminal Revision Application No 11 of 2023 **dated 27/11/2024**

Sanjay Bapurao Aarewar

Versus

Sangita Sanjay Aarewar

MAINTENANCE TO DIVORCEE

Code of Criminal Procedure, 1973 Sec. 125 - Hindu Marriage Act, 1955 Sec. 13 - Protection of Women from Domestic Violence Act, 2005 Sec. 22, Sec. 12, Sec. 19, Sec. 20, Sec. 18 - Maintenance to Divorcee - Revision challenged enhanced maintenance under PWDV Act post-divorce - Applicant argued no entitlement after divorce, citing absence of domestic relationship - High Court referred to Apex Court rulings affirming divorced wife's eligibility for relief if violence is linked to past domestic relationship - Observed appellate court correctly enhanced maintenance to Rs.3000 per month considering circumstances - No interference warranted in light of settled law recognizing broad scope of domestic violence definition under PWDV Act - Revision Dismissed

Law Point: Divorced wife entitled to maintenance under PWDV Act if domestic violence pertains to prior domestic relationship-Decree of divorce does not absolve liability for violence committed during marriage.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 125

Hindu Marriage Act, 1955 Sec. 13

Protection of Women from Domestic Violence Act, 2005 Sec. 22, Sec. 12, Sec. 19, Sec. 20, Sec. 18

Counsel:

Swati Kulkarni (Potey), Parita N Lakhani

JUDGEMENT

Sandipkumar C More, J.- [1] Heard finally with consent of learned Counsel appearing on behalf of the rival parties at admission stage.

[2] The Applicant/husband has filed this Revision Application challenging the Judgment and order dated 27/4/2021 passed by the learned Additional Sessions Judge, Kelapur in Criminal Appeal No. 20/2014, whereby the maintenance amount of Rs.1500/- per month is enhanced to Rs.3000/- per month from the date of application i.e. 5/12/2012. The earlier maintenance amount of Rs.1500/- per month was granted by the learned Judicial Magistrate First Class (Court No.2), Kelapur in Misc. Criminal Case No. 83/2012 filed by the Non-applicant/wife herein under Section 12(1) of the Protection of Woman from Domestic Violence Act, 2005 (for short, 'PWDV Act') for various reliefs under Sections 18, 19, 20 and 22 of the said Act.

[3] The learned Counsel for Applicant/husband submits that the learned appellate court has definitely erred in enhancing the maintenance amount of Rs.1500/- per month to Rs.3000/- per month by ignoring the fact that there was no domestic relationship between the parties since 2009 and that decree of divorce has already granted in favour of the Non-applicant/wife at her instance only. Thus, she raised an issue that after grant of divorce by the competent court, the Non-applicant/wife is not entitled for any relief of maintenance under the provisions of PWDV Act, and for that purpose she relied on the Judgment of this Court in the case of Sadhana Hemant Walwatkar V/s Hemant Shalikramji Walwatkar,2019 SCCOnLineBom 659.

[4] On the contrary, the learned Counsel for Non-applicant/wife strongly resisted the submissions made on behalf of the Applicant/husband. She claimed that even after divorce the wife is entitled for relief under the provisions of PWDV Act. She heavily relied on the Judgment of the Hon'ble Apex Court in the case of Prabha Tyagi V/s Kamlesh Devi,2022 3 UC 1505.

[5] In the light of submissions, I have gone through the documents on record along with the impugned Judgments and also the observations in the cited Judgments. Chronology of the incidents indicates that marriage between the Applicant and Non-applicant had solemnized on 25/5/2005, but according to the Applicant/husband, the Non-applicant/wife on her own, left his company and started residing at Pandharkawada, District Yavatmal with her parents for last 13 to 14 years. She filed Misc. Criminal Case No. 83/2012 on 5/12/2012 with the learned trial court for the reliefs under the provisions of PWDV Act including monetary relief. On the same day, she had also filed HMP No. 50/2012 in the Court of Civil Judge Senior Division, Kelapur for getting divorce under Section 13 of the Hindu Marriage Act, 1955. The

learned trial court, vide order dated 17/6/2014, granted maintenance at the rate of Rs.1500/- per month to the Non-applicant/wife from 5/12/2012. However, during the pendency of that application, the learned Civil Judge Senior Division, Kelapur had granted decree of divorce in favour of the Non-applicant/wife in HMP No.50/2012 on 13/1/2014. The order of granting maintenance by the learned trial court was assailed by the Non-applicant/wife before the learned appellate court in Criminal Appeal No. 20/2014. The said appeal was partly allowed, as mentioned above, and the maintenance amount of Rs.1500/- per month was enhanced to Rs.3000/- per month. Hence, this Revision Application.

[6] According to the learned Counsel for Applicant/husband, once the decree of divorce is granted, and that too, at the instance of Non-applicant/wife, she is not entitled for any relief under PWDV Act, as there was no domestic relationship in existence between the parties. Thus, the only question which needs consideration in the present Application is that, whether a divorcee is entitled for reliefs under PWDV Act for want of existence of domestic relationship. The learned Counsel for Applicant/husband heavily relied on the Judgment of this Court in the case of **Sadhana V/s Hemant** (cited supra), wherein following observation is made:

> "In the presence case, divorce was granted by the family Court vide order dated 30 th June, 2008. Application under DV Act was filed in the year 2009. At the time of filing of application under the D.V. Act, the applicant was not the wife. There was no domestic relationship between them. Hence, orders passed by the learned JMFC, Nagpur and maintained by Additional Sessions Judge, Nagpur in Criminal Appeal No. 235 of 2015 are perfectly legal and correct. There is no perversity or legality in the impugned orders."

[7] Under the aforesaid observation, it is evident that once the divorce is granted, then there cannot be any domestic relationship between the husband and wife, and therefore, wife is not entitled for maintenance under the provisions of PWDV Act. However, the learned Counsel for Respondent heavily relied on the Judgment of Hon'ble Apex Court in the case of **Prabha Tyagi V/s Kamlesh Devi** (cited supra) and submitted that the Hon'ble Apex Court has dealt with particular issue involved in this matter and answered the same in favour of the Non-applicant/wife.

[8] Admittedly, in the case of **Sadhana V/s Hemant** (cited supra), this Court was of the opinion that after passing the decree of divorce the wife is not entitled to the reliefs claimed under the PWDV Act including the relief of grant of maintenance. However, the Hon'ble Apex Court in the case of **Prabha Tyagi** (supra) has referred all the earlier Judgments on this aspect and analyzed the word 'domestic relationship', as noted in PWDV Act. The Hon'ble Apex Court, specially in the case of 'divorce', has commented in respect of 'domestic relationship' in paragraph No.43 (b) (ii) as under:

> "(ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during

> marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also."

[9] On going through the aforesaid observation, it is evident that even a divorcee is entitled to claim relief under PWDV Act, if it is related to the period of domestic relationship with the husband and his relatives. Further the Hon'ble Apex Court in the aforesaid Judgment has framed three vital questions involved in that case, which can be stated as under:

> "(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act ?
>
> (ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence ?
>
> (iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed ?"

[10] So far as first question is concerned, it is not involved in the present case, but the remaining two questions are important to decide the main controversy in the present matter.

[11] The learned trial court, while granting maintenance to the Non-applicant/wife has not dealt with the aspect of divorce. However, the learned appellate court, though considered the aspect of divorce, but discarded the same, as the Applicant/husband had not raised such issue before the learned trial court. Further the learned appellate court, by considering the definition of 'wife' under Section 125 of the Code of Criminal Procedure, held her entitled for grant of maintenance. However, the aspect of 'domestic relationship' vis-a-vis 'divorce' was not considered by the learned appellate court. However, while dealing with the aforesaid two questions, the Hon'ble Apex Court has answered the second question by holding that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. Further while answering the third and most important question, the Hon'ble Apex Court has observed as follows:

> "there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-a-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D. V. Act but has at any point of time

lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D. V. Act."

[12] Thus, from the aforesaid observations, the Hon'ble Apex Court, by considering the wide scope of definition of 'domestic violence', has clearly included a divorced wife to be entitled for the reliefs under Section 12 of PWDV Act. This Court, while dismissing the Revision Application of husband against the grant of maintenance to divorced wife has followed the aforesaid Judgment of Hon'ble Apex Court in the case of **Gajanan V/s Surekha Gajanan Rathod in Criminal Revision Application No. 290 of 2018** at Aurangabad Bench. This Court, in the said Judgment, has also followed earlier Judgment of the Hon'ble Apex Court in the case of **V. D. Bhanot V/s Savita Bhanot**, 2012 3 SCC 183, wherein it is observed that where an act of domestic violence is once committed, then subsequent decree of divorce will not absolved the liability of the respondent from the offence committed or deny the benefit, to which the aggrieved person is entitled to under PWDV Act.

[13] In the instant case also the allegations of domestic violence appears to be of the period when the parties were in domestic relationship. Further, in the light of clear observations of the Hon'ble Apex Court in the Judgments of **Prabha Tyagi** and **V. D. Bhanot** (cited supra), the main question involved in this matter is already answered in favour of the Non-applicant/wife.

[14] Thus, there cannot be any perversity in the impugned Judgments in the light of law laid down by the Hon'ble Supreme Court in the aforesaid cases. As such, no interference in the impugned Judgment is required. Resultantly, the Criminal Revision Application stands dismissed

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2025(1)MCRJ76

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Urmila Joshi-Phalke]

Criminal Application (Ba) No 940 of 2024 **dated 27/11/2024**

Surbhi D/o Raju Soni

Versus

State of Maharashtra

TEMPORARY BAIL ON HUMANITARIAN GROUNDS

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 37, Sec. 20 - Temporary Bail on Humanitarian Grounds - Applicant charged under NDPS Act sought temporary bail due to advanced pregnancy - Prosecution opposed

citing possession of commercial quantity of contraband and rigors of Section 37 - High Court noted compliance with procedural safeguards and completion of investigation - Referred to Apex Court guidelines allowing temporary release of pregnant prisoners on humanitarian grounds - Granted bail for six months with conditions including bond execution, non-indulgence in similar activities, and provision of address proof - Bail Granted

Law Point: Temporary release of pregnant prisoners is permissible under humanitarian grounds if security risks are manageable-Guidelines emphasize dignity and care during childbirth.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 37, Sec. 20

Counsel:

M V Rai, S V Narale

JUDGEMENT

Urmila Joshi-Phalke, J.- [1] The applicant, who is since date of arrest i.e. 30.4.2024 is in jail, seeks regular bail in Crime No.92/2024 registered with the non-applicant/police station for offences under Sections 20(b)(ii), 29, and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act).

[2] The crime was registered as the Gondia Railway Security Force conducted a raid in Train No.08327 (Sambalpur-Pune Express) and during the raid, in Coach No.B-3, beneath Seat Nos.17, 18, 19, 20, and 21, contraband "Ganja" was recovered from five persons including the applicant.

[3] Insofar as the applicant is concerned, contraband "Ganja" 7.061 kilograms, from a bag i.e. black colour pittu bag, was recovered in presence of panchas. It transpired that she and her husband along with other co-accused persons were carrying commercial quantity of "Ganja" of 33.201 kilograms worth of Rs.6,64,020/-.

[4] As a follow up action, a search was conducted. Samples were obtained in presence of panchas. Seized contraband was forwarded to the Magistrate for inventory. Samples were forwarded to chemical analysis and the applicant was arrested. At the time of the arrest, she was two months pregnant. Now, she is carrying an advanced pregnancy and, therefore, the present application is filed.

[5] The application is strongly opposed by the State on ground that during the course of investigation, commercial quantity of "Ganja" was found in possession of the applicant and other co-accused persons including her husband. Search and seizure were done. Inventory Report was also prepared and samples were forwarded to the Chemical Analyzer. The Investigating Officer recorded relevant statements of witnesses and submitted chargesheet against the applicant along with co-accused persons. Huge quantity of contraband was seized and the applicant was found

transporting the same. In view of rigour under section 37 of the NDPS Act, the application deserves to be rejected.

[6] Heard learned counsel Shri M.V.Rai for the applicant and learned Additional Public Prosecutor S.V.Narale for the State.

[7] Learned counsel for the applicant submitted that in possession of the applicant only 7.061 kilograms of "Ganja" was seized, which is not commercial quantity. He submitted that the application is filed mainly on grounds that she is having an advanced stage of pregnancy and, therefore, for a limited period, she be released on bail. The applicant is exhibiting symptoms, which are indicative of probable complications at the time of delivery of child and, therefore, on humanitarian ground, the applicant deserves to be released on temporary bail. He further submitted that the applicant is in prison, which is not equipped to provide an emergent medical care which the applicant requires.

[8] Per contra, learned Additional Public Prosecutor for the State submitted that a due care can be taken in the prison also and considering the commercial quantity of contraband article was found in possession of the applicant and in view of rigour under Section 37 of the NDPS Act, the application deserves to be rejected.

[9] Having heard learned counsel for parties and perused material on record, it shows that there is no dispute that the applicant and her husband were found in possession of contraband article "Ganja" along with other co-accused persons. A commercial quantity of contraband was found in their possession. During investigation, the Investigating Officer collected samples in presence of panchas. The contraband articles were also forwarded to inventory. As far as compliance under Section 50 of the NDPS Act is concerned, the same was carried out. The Inventory Report shows quantity seized was commercial.

[10] A settled position of law is that a person to be searched under the NDPS Act is required to be informed about his/ her right under Section 50 of the NDPS Act before he/she is searched and the same is mandatory requirement. Section 50 of the NDPS Act would be applicable in case of personal search of the accused and not when it is in respect of baggages; articles, and vehicles and or container.

[11] As far as the present case is concerned, admittedly, contraband articles were not found during the personal search of the accused, but it was found in baggages carried by the applicant and other accused persons.

[12] Insofar as the compliance is concerned, communication on record shows that samples were obtained in presence of panchas.

[13] The application is filed mainly on ground of an advanced pregnancy of the applicant. As the applicant was carrying pregnancy on the date of arrest and, now, is carrying an advanced pregnancy, there is an apprehension of complications during delivery of child.

[14] It is true that the applicant can be treated at the Government Hospital for the said purpose. However, delivering child during pregnancy in jail atmosphere would certainly impact not only on the applicant but also on child, which cannot be lost sight of. Every person is entitled to dignity which situation demands including prisoner. Delivering child in prison may have consequence on mother as well as child and, therefore, humane considerations are required. The said aspect is considered in the case of R.D.Upadhya vs. State of A.P. and ors,2007 15 SCC 337 wherein the Hon'ble Apex Court considered plight of children staying in jail with their mothers and issued directions as far as child birth in prison is concerned, as follows:

(a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility;

(b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned, and

(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

[15] Thus, the Hon'ble Apex Court, in clear terms, guided that as far as possible arrangements for temporary release/parole should made to enable prisoner outside prison.

[16] In the light of above said facts, if the case of the applicant is considered, there is no dispute as to fact that the applicant and other co-accused persons were found in possession of commercial quantity of contraband.

[17] Admittedly, investigation is completed and chargesheet is filed.

[18] As far as merits are concerned, there is a prima facie material. Yet, in the light of guidelines issued by the Hon'ble Apex Court, few factors are to be taken into consideration that release of the applicant does not pose a high security risk and would not cause any prejudice to the investigation though there is a rigour under section 37 of the NDPS Act. However, considering circumstances, the application to release the applicant on temporary bail deserves to be considered on humanitarian ground.

[19] For foregoing reasons, the application deserves to be allowed by imposing certain conditions. Hence, following order is passed:

ORDER

(1) The Criminal Application is **allowed.**

(2) Applicant - Surbhi d/o Raju Soni, shall be released on temporary bail, in Crime No.92/2024 registered with the non-applicant/police station for offences under Sections 20(b)(ii), 29, and 8(c) of the of the Narcotic Drugs and Psychotropic

Substances Act, 1985, for a period of six months from the date of her release from the prison concerned on her executing a P.R.Bond in the sum of Rs.50,000/- with one or more sureties of the like amount to the satisfaction of learned Judge below.

(3) Considering the fact that the applicant is carrying an advanced pregnancy, she is permitted to furnish cash security of Rs.50,000/- in lieu of surety for a period of two weeks.

(4) The applicant shall not directly or indirectly make any inducement or threat or promise to any of witnesses acquainted with facts of the case so as to dissuade her from disclosing such facts to the court or any police officer and shall not tamper with the prosecution evidence.

(5) The applicant shall not indulge herself in similar type of activities.

(6) The applicant shall furnish her cell phone number(s) before the Investigating Officer as well as her address with her address proof.

Application stands **disposed of**

2025(1)MCRJ80

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Nitin W Sambre; Vrushali V Joshi]

Criminal Writ Petition No 38 of 2024 **dated 26/11/2024**

Pradipsingh Murlidharsingh Thakur

Versus

State of Maharashtra

REMISSION ELIGIBILITY

Indian Penal Code, 1860 Sec. 304B, Sec. 300, Sec. 302, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 432 - Remission Eligibility - Petitioner convicted for murdering pregnant wife sought remission under GR March 15, 2010 - State denied citing brutal crime by police personnel - High Court found no exceptional violence or brutality as required under Category 2(c) of GR - Re-categorized under 2(b) for premeditated crime, entitling petitioner to remission after 22 years including remission - Directed jail authorities to determine remission eligibility as per revised category - Rule Made Absolute

Law Point: Premature release decisions require adherence to categorization under GR and proportionality of sentence-Distinction drawn between ordinary and exceptional violence for remission.

Acts Referred:

Indian Penal Code, 1860 Sec. 304B, Sec. 300, Sec. 302, Sec. 498A

Code of Criminal Procedure, 1973 Sec. 432

Counsel:

Y P Bhelande, N R Tripathi

JUDGEMENT

Nitin W. Sambre, J.- [1] Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for the parties.

The petitioner, convicted in Sessions Trial Case No.301/2001 by the Court of 2nd Ad-hoc Additional Sessions Judge, Nagpur is seeking his release based on the categorization permitted under Annexure-I Category 2 (b) of the Government Resolution dated March 15, 2010 issued under Section 432 of the Criminal Procedure Code, 1973.

[2] The petitioner infact has sought his categorization. The State Government vide its order dated September 14, 2018 refused to extend the benefit of categorization to the petitioner considering the fact that the petitioner was a Police personnel and has murdered his pregnant wife.

[3] The facts necessary for deciding the petition are as under:

The petitioner got married to the deceased in 1994 and has committed an offence of strangulating his wife on February 24, 2001. Having regard to the fact that the death occurred within seven years of marriage, the petitioner was charged with the offences punishable under Sections 302, 498-A and 304-B of the Indian Penal Code. The Sessions Court believing the testimony of PW-1 Brijeshsingh, brother of the deceased and PW-11 Vishal Kamble, convicted the petitioner for an offence punishable under Section 302 of IPC and sentenced him to be hanged till death. The petitioner was also convicted for the offence punishable under Section 498-A of IPC and was sentenced to suffer three years rigorous imprisonment and to pay fine of Rs.3,000/- and he was acquitted of the offence punishable under Section 304-B of IPC.

[4] Being aggrieved, the petitioner preferred an appeal before this Court vide Criminal Appeal No.141/2003 whereas the State Government made a reference for confirmation of death sentence vide Confirmation Case No.2/2003 which came be decided on August 11, 2003. The appeal against conviction preferred by the petitioner came to be partly allowed thereby converting his punishment to life imprisonment and the judgment of conviction accordingly stood modified.

[5] In this backdrop, the petitioner has sought his categorization pursuant to the Resolution issued by the State Government under Section 432 of the Criminal Procedure Code meaning that the petitioner should be categorized which shall make him entitled for the benefit of remission in his punishment. This prayer has been rejected by order dated September 14, 2018.

[6] Shri Y. P. Bhelande, learned counsel (appointed) for the petitioner would urge that the impugned communication dated September 14, 2018 cannot be said to be

sustainable as the scheme of Section 432 of the Criminal Procedure Code does not confer any power on the State Government to discriminate amongst the convicts so as to refuse the prayer for categorization. So as to substantiate his claim, the learned counsel would draw support from the Division Bench judgment of this Court in the matter of **Satish Ramji Chaurasiya vs. State of Maharashtra**, 2024 4 MhLJ(Cri) 558 so as to claim that the respondent-State Government in the matter of categorization and release of a convict cannot make discrimination. In paragraphs 13 and 16 of the judgment it is observed thus:

> "13. Dr.Chaudhry has relied upon a recent decision of the Apex Court in the case of Rajkumar Vs. The State of Uttar Pradesh2, where, by referring to its earlier judgment in the case of Rashidul Jafar @ Chota Vs. State of Uttar Pradesh & Anr.3, directions were issued for premature release of a person sentenced for imprisonment for life and the question came of implementing the guidelines formulated by the State of Uttar Pradeh, the grievance made by 50 persons who were subjected to a pick and choose policy, Dr.Chandrachud, the Hon'ble The Chief Justice of India, has specifically held as under:-
>
> "13. The State having formulated Rules and Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuses and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most."
>
> 16. .... Since there is no discretion left in the State Government to further categorise him and refuse him premature release on the pretext that he is found guilty of a heinous offence hit by immorality, as he has committed rape on her own daughter and impregnated her, the refusal by the State Government to release him on completion of more than 20 years of actual imprisonment, including remission is in utter violation of its own policy framed in exercise of power under Section 432 of the Code of 1973. Since, the Petitioner has already undergone 22 years of actual imprisonment, including remission, he is entitled for premature release, by declaring that he

has undergone the sentence awarded to him, on finding him guilty of committing an offence of rape.

[7] According to Shri Bhelande, the conduct of the petitioner in any case cannot be termed to be the act of committing an offence of murder with exceptional violence or brutality. He would claim that at the most the act of the petitioner can be categorized under category 2(b) that is where the crime is committed with premeditation having regard to the factual matrix. In support of this contention, the learned counsel would rely on the observations made in paragraph 23 of the judgment of this Court in **Criminal Writ Petition No.4721/2021** (Bilal Bashid Shaikh vs. The State of Maharashtra and ors.) delivered at Principal Seat which read thus:

"23. In case of Rajaram Patil vs. State of Maharashtra,1996 DGLS(Bom) 18, the Division Bench of this Court while entertaining a writ petition under Article 226 of the Constitution of India has made the following pertinent obervations, which can be extracted from paragraph 4, as under:-

"4. Every murder is a result of some kind of violence. Use of weapon or blows on the vital part by itself cannot be termed to be an exceptional violence. Such a violence would be ordinary violence for committing murder. It appears that the State Government wanted to create a separate category of murders in which there is an exceptional violence or which show the perversity of mind. In a peace loving society, every murder is bound to shock the members of the society but the exceptional violence creates tremors of shock and indignation. We do not wish to give examples which amount to exceptional violence but suffice it to say that, the present case is not one which can be lebelled as a case of exceptional violence. Though every offence of murder is creation of an ill-mind, perversity is something more than that. Perverse individuals may act in a fashion in committing the murder as would show that depravity of balance of mind. We do not see anything in the acts committed by the present petitioner which show any perversity in his mind. The question as to whether there is an exceptional violence or there is perversity in a particular case will have to be decided on the basis of the facts and circumstances of that case and no yardstick of universal application can be available for this purpose."

[8] In support of the prayer for premature release, the learned counsel would also draw support from the observations made in paragraphs 17 and 18 of the judgment in Dilip S. Shetye vs State Sentence Review board and ors.,2021 1 AIRBomR(Cri) 263 delivered at Goa Bench which read thus:

" 17. As regards the first reason cited by the Board, it is no doubt true that the offence committed by the petitioner was a serious one. This is the reason why the petitioner was sentenced for life and as on date has suffered actual incarceration of about 20 years. The Board was, therefore, required to

consider whether this sentence was sufficient and commensurate to the crime committed by the petitioner. Merely stating that his was a serious crime without anything else, cannot be a good ground to refuse premature release of the petitioner....

18. ... Besides, the record very clearly indicates that this petitioner was released on parole and furlough on not less than 23 occasions. There is no complaint that on any of these occasions the petitioner defied the terms and conditions subject to which he was released. "

[9] As against above, the learned Additional Public Prosecutor Smt Tripathi would invite our attention to the occupation of the petitioner of being a Police personnel at the relevant time when the offence was committed. According to her, considering the nature of duty entrusted to the petitioner, the act of strangulating his own pregnant wife sufficiently prompted the State to exercise the powers not to extend the benefit of premature release. According to her, the offence committed by the petitioner as such falls under the exceptional category and that being so, the State has powers to decide whether to extend the benefit of premature release so conferred under Section 432 of the Criminal Procedure Code vide the Government Resolution referred above.

[10] We have considered the rival submissions.

It is not in dispute that the conviction of the petitioner was modified by the High Court by its judgment and order dated August 11, 2003. The prosecution claim was accepted in appeal and so also in the Court below that the petitioner in the capacity of husband strangulated his wife for not fulfilling his demand of dowry.

[11] The fact that the deceased was pregnant at the relevant time is sought to be relied upon by the learned Additional Public Prosecutor to establish that the act of the petitioner can be termed as brutal and heinous. The State has taken a stand that in exercise of powers under the Government Resolution dated March 15, 2010, particularly Category 2(c) of Annexure-I, it has decided not to grant prayer for premature release. Such decision is based on the following foundations:

(a) that the petitioner was an employee of Police department;

(b) he being a Police personnel, commission of crime of violence with brutality was not expected of him and if so released in this backdrop, same would have an adverse impact on the society;

(c) that he has murdered his pregnant wife.

[12] If we appreciate the aforesaid reasoning in the backdrop of provisions of Section 432 of the Criminal Procedure Code, we are required to be sensitive to the powers conferred by the legislation to suspend or remit the sentence. So as to regulate the said issue, the State has issued a resolution dated March 15, 2010, particularly Category-8 of Annexure-I of the said resolution gives liberty to the State Government to decide individual case on merit. Perusal of the said Annexure-I further depicts that the maximum imprisonment which is prescribed under category (2) in the said

resolution is 26 years. As such, the intention of the State Government appears to be to grant remission in sentence to all the categories of convicts and not to deny them the benefit empowered under Section 432 of the Criminal Procedure Code.

[13] In such an eventuality, just because the petitioner was an employee of Police department and the fact that he murdered his pregnant wife by itself would not disenttile him to get the benefit of remission which is provided under the aforesaid legal provision. Rather there is no separate category carved out as an exception to the normal Rules of remission provided under Section 432 of the Criminal Procedure Code for a Police personnel committing heinous crime of murdering his pregnant wife.

[14] For the aforesaid reasons, refusal by the State to admit the petitioner for remission cannot be said to be sustainable and that being so, the order impugned dated September 14, 2018 is hereby quashed and set aside.

[15] This takes us to the next submission of the counsel for the petitioner about categorization of the petitioner under category 2(b) and not under category 2(c) as the same has been claimed in an alternate submission made by the learned Additional Public Prosecutor. Category 2(c) contemplates life imprisonment of 26 years with remission where the crime is committed with exceptional violence and/or with brutality.

[16] We have considered the reasoning given by the Division Bench while partly allowing the appeal against conviction of the petitioner. The Division Bench was of the view that the petitioner has strangulated his wife and as such, the same does not fall in the category of rarest of rare case.

[17] In an offence of murder having regard to the provisions of Sections 300 and 302 of IPC, one has to be sensitive of the fact that the elements of violence are necessary for drawing a conclusion of commission of such offence. The scheme of remission framed under Section 432 of the Criminal Procedure Code as sought to be relied by the petitioner is based on the gravity and number of convictions.

[18] One of the important aspect while dealing with the claim of remission which this Court is required to be sensitive to is whether the act amounts to perversity in combination with violent mind.

In the case at hand, it is specifically demonstrated from the judgment of the appellate Court that the conviction of the appellant (petitioner here) for an offence punishable under Section 498-A and 302 IPC is based on the non-fulfillment of demand dowry and subsequent death of victim who happened to be wife of the petitioner within seven years of marriage. Of course the act of strangulation which is attributed to the petitioner is a violent act but whether such an act can be termed as one causing death with brutality or with exceptional violence, is required to be looked into.

[19] In our view, having regard to the evidence which is brought on record particularly of PW-1 Brijeshsingh, brother of deceased and PW-11 Vishal Kamble, we are of the view that it cannot be inferred that the petitioner has caused the murder of

his wife with exceptional violence or that with brutality. We are required to be sensitive to the nature of injuries suffered by the deceased. In this case, the victim suffered two injuries; one ligature mark on neck and another nail abrasion on right side of neck. The aforesaid injuries have also prompted us to form an opinion that the case of the petitioner cannot fall under exceptional circumstances so as to make him liable to undergo 26 years of imprisonment for murdering his wife with exceptional violence or brutality. As such, the contention canvassed by the learned Additional Public Prosecutor that the petitioner can be categorized under category 2(c) of Annexure-I appended to the Government Resolution dated March 15, 2010 is liable to be rejected.

[20] For the aforesaid reasons we categorize the petitioner under category 2(b) of Annexure-I appended to the Government Resolution dated March 15, 2010 by holding that the petitioner committed crime with premeditation. That being so, the petitioner is liable to undergo 22 years imprisonment including remission.

[21] We direct the Jail authorities to appropriately implement the aforesaid observations to form an opinion as to whether the petitioner has undergone 22 years of imprisonment including remission.

[22] In view of the aforesaid observations, Rule is made absolute.

[23] Fees of the Advocate appointed for the petitioner be paid as per the Rules

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2025(1)MCRJ86

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Vibha Kankanwadi; R W Joshi]

Criminal Application No 3426 of 2022 **dated 25/11/2024**

Bhanudas S/o Baburao Dalve

Versus

State of Maharashtra; Prasad S/o Ravindra Kulkarni

RETROSPECTIVE OPERATION OF PENAL PROVISIONS

Code of Criminal Procedure, 1973 Sec. 482, Sec. 173 - Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 39 - Retrospective Operation of Penal Provisions - Applicant sought quashing of FIR, charge-sheet, and criminal case under Section 39 of Maharashtra Money-Lending Act, 2014 - Transactions cited in allegations occurred prior to enactment date - High Court noted penal provisions cannot operate retrospectively - Affirmed absence of cognizability under repealed Bombay Money Lenders Act, 1946 - FIR, charge-sheet, and case quashed for lack of jurisdiction - Application Allowed

Law Point: Penal provisions cannot apply retroactively-Offences under repealed laws, if non-cognizable, bar subsequent prosecution under newer enactments.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 482, Sec. 173

Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 39

Counsel:

S B Choudhari, N R Dayama, V C Solshe

JUDGEMENT

R.W. Joshi, J.- [1] Present criminal application is filed under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "Cr.P.C." for brevity) seeking quashing of F.I.R. No. 0262/2022 registered with Naldurg Police Station, Tq. Tuljapur, Dist. Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 (Hereinafter referred to as "the Act of 2014" for brevity).

[2] After filing of the present Criminal Application, the charge-sheet bearing No.96/2023 came to be filed under Section 173 of the Code of Criminal Procedure and Criminal Case, being Regular Criminal Case No. 418/2023 came to be registered against the applicant in the Court of learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad. The application came to be amended to incorporate prayers for quashing of the charge-sheet and Regular Criminal Case.

[3] One Eknath Vasant Takne has lodged a complaint with the authorities under the Act of 2014 alleging that the applicant is engaged in the business of money lending, although he does not possess licence for the same. The allegation in the complaint is that the applicant indulges in money lending transaction and obtains sale deeds of immovable properties towards the security of the loan amount. These sale deeds are shame/fictitious documents executed with an understanding that they are prepared for securing the loan amount and once the loan is repaid along with interest, the properties would be reconveyed either to the borrowers or to their family members. The complaint by Eknath Vasantrao Takne resulted in initiation of an enquiry against the applicant. The Assistant Registrar of Co-operative Societies, Tuljapur submitted a report dated 03.08.2017 to the District Deputy Registrar of Co-operative Societies, Osmanabad with respect to money lending transactions allegedly entered into by the applicant. Based on the enquiry report, the District Deputy Registrar directed the Assistant Registrar to lodge F.I.R. against the applicant for the offence punishable under section 39 of the Act of 2014. The Assistant Registrar in turn authorized respondent No.2 Shri. Prasad Ravindra Kulkarni, Officer of Co-operative Societies Class-I to lodge complaint against the applicant, in order to initiate the criminal prosecution against him. Accordingly, respondent No.2 has lodged FIR against the applicant on 18.08.2022. The FIR refers to investigation conducted by the Officers under the Money Lending Act on the complaint made by Shri. Eknath Takne and sale transactions which were found, wherein initial properties were purchased by the

applicant and thereafter the same were reconveyed to person from whom the same were purchased or his family members.

[4] As stated above, respondent No.1 has conducted investigation in the matter and has filed charge-sheet No.96/2023 dated 25.11.2023 under Section 173 of the Code of Criminal Procedure. The report dated 03.08.2017 submitted by the Assistant Registrar to the District Deputy Registrar is a part of the charge-sheet. The statements of various persons, who had transferred their respective properties in favour of the applicant and thereafter repurchased the same either in their own names or in the names of their family members, are recorded. Copies of the sale deeds are also included in the charge-sheet.

[5] The applicant is aggrieved by the FIR registered against him, so also initiation of criminal prosecution and has, therefore, approached this Court, praying for quashing of FIR, charge-sheet and the criminal case registered against him.

[6] We have heard Mr. S.B. Choudhari, learned Advocate appearing for the applicant, Mr. N.R. Dayama, learned APP for respondent No.1 and Mr. V.C. Solshe, learned Advocate for assist to P.P.. We have perused the FIR, report under Section 173 of the Code of Criminal Procedure and documents forming part of the charge-sheet.

[7] Learned Advocate for the applicant contends that all the transactions, that have been referred in the report dated 03.08.2017, are prior to 16.01.2014 i.e. the date on which the Act of 2014 has come into force. He contends that Section 39 of the Act of 2014, being a penal provision, can not have retrospective operation. He, therefore, contends that even if the allegation that the applicant was engaged in business of illegal money lending without licence is accepted to be true and correct, he can not be prosecuted under Section 39 of the Act of 2014. He further contends that offence of money lending without licence was non-cognizable offence under the Bombay Money Lenders Act, 1946, which has now been repealed by the Act of 2014. Since all the transactions are pertaining to the period prior to commencement of the Act of 2014, registration of FIR for the alleged offence would be completely without jurisdiction and authority of law. He has also disputed that the sale transactions referred to in the report are only in order to cover illegal money lending transactions. He further contends that even if the entire story of the prosecution is taken on its face value, it can not be said that the applicant was engaged in continuous and systematic activities of money lending, so as to make out a case of his engaging in business of money lending.

[8] Per-Contra, learned APP and learned Advocate for assist the P.P. contend that the investigation report prepared by the Assistant Registrar, Co-operative Societies has referred to several transactions of illegal money lending by the applicant. The total transactions regarding initial purchase of the property and subsequent sale of the same are 24 in numbers. The respondents contend that these number of transactions would definitely indicate that the applicant has engaged in business of money lending without licence, and therefore, is liable for prosecution and punishment under Section 39 of the

Act of 2014. They contend that such number of transactions of purchase and subsequent sell of property would conclusively establish that the applicant has indulged in illegal money lending business. They further contend that having regard to the material on record, the applicant has failed to make out any case for quashing of FIR and/or Regular Criminal Case registered against him.

[9] We have heard learned respective Advocates and taken into consideration the rival submissions.

[10] At the outset, we wish to record that the Act of 2014 has come into force on 16.01.2014. There are in all 24 transactions, which have been recorded in the report of Assistant Registrar, wherein the properties are purchased and thereafter reconveyed by the applicant. Out of 24 transactions, there is only one transaction which is subsequent to 16.01.2014 i.e. the date of commencement of the Act of 2014. This sale transaction is dated 01.04.2017. The applicant has sold immovable property to one Datta Bapurao Takne vide sale deed dated 01.04.2017. The allegation with respect to this sale transaction is that the same property was purchased by the applicant from one Bhimashankar Takne under sale deed dated 11.01.1999. This sale deed dated 11.01.1999 is stated to be a shame sale deed executed for creating security in favour of the applicant for the loan advanced by him to Bhimashankar Takne. It is alleged that after the loan amount was repaid by Bhimashankar Takne, the applicant has executed the sale deed with respect to the property in favour of Datta Takne, who is real brother of Bhimashankar Takne, the borrower. Even if we accept the statement with respect to the sale deeds dated 11.01.1999 and 01.04.2017 to be true and correct, no offence is made out against the applicant under Section 39 of the Act of 2014, in as much as, the loan transaction is clearly prior to commencement of the Act of 2014.

[11] It will be relevant to refer to the statement of the alleged borrower Bhimashankar Takne, wherein he has stated that he had sold the property to the applicant as security for loan amount of Rs.25,000/- advanced by the applicant, and that, he had repaid the loan amount with interest in the year 2002. He states that although, the loan amount with interest total amounting to Rs.50,000/- was repaid in the year 2002 itself, the applicant has reconveyed property in the year 2017. The statement clearly records the year of loan transaction as 1999. It is thus clear that the alleged transaction is prior to commencement of the Act of 2014.

[12] All other transactions referred in the report pertaining to sale of property in favour of the applicant and recoveyance thereof in favour of the borrowers or their family members are also prior to 16.01.2014 i.e. the date of commencement of Act of 2014. We have inquired from learned APP and learned Advocate for respondent No.2 as to whether there is any other evidence apart from the aforesaid sale transactions in order to demonstrate that the applicant was engaged in the business of illegal money lending, both learned Advocates fairly replied that the only evidence available against the applicant is in the form of the said sale transactions recorded in the report of the Assistant Registrar.

[13] It is settled legal principle that any penal provision can not have retrospective operation. Section 39 of the Act of 2014 is brought on the Statute Book on 16.01.2014. Consequently, a person can not be prosecuted or punished for the offence under Section 39 of the Act of 2014, if the business of money lending was conducted prior to 16.01.2014. The position is no longer res integra and is squarely covered by a Division Bench judgment of this Court in the matter of **Baliram Ashroba Kadape and others Vs. State of Maharashtra and others**, 2018 AllMR(Cri) 2701. This Court has held that the provision of Section 39 of the Act of 2014 does not have retrospective operation. It is further held that under the Bombay Money Lenders Act, 1946, the offence of money lending without licence was an offence under Section 32B. The said offence under Section 32B was not a cognizable offence in view of Section 35A of the said Act. It is thus held in the judgment that FIR could not have been registered for offence under Section 32B and accordingly, the FIR in the said case was quashed by this Court. We are in fully agreement with the law laid down in the matter of **Baliram Ashroba Kadape (supra)** and are also bound by the same. We are of the opinion that the controversy involved in the present matter is squarely covered by the said judgment. In the present case, all the alleged transactions of money lending are prior to commencement of the Act of 2014. Even if the applicant was to be prosecuted under the erstwhile Bombay Money Lenders Act, 1946, which has now been repealed, the FIR can not be registered for the said offence, in as much as, the offence was non-cognizable under erstwhile Act and was time barred in view of punishment prescribed under old Act.

[14] For the reasons aforesaid, we are of the opinion that registration of the FIR and criminal prosecution against the applicant are clearly barred by law and as such, the FIR and criminal prosecution are liable to be quashed. We therefore pass the following order:-

ORDER

(i) The application is allowed.

(ii) F.I.R. No. 0262/2022 dated 18.08.2022 registered against the applicant - Bhanudas Baburao Dalve with Naldurg Police Station, Tq.Tuljapur, Dist. Osmanabad, for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, Charge-sheet No.96/2023 dated 25.11.2023 and Regular Criminal Case No. 418/2023 pending on the file of the learned Judicial Magistrate, First Class, Tuljapur, Dist. Osmanabad are hereby quashed

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2025(1)MCRJ91

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Vibha Kankanwadi; R W Joshi]

Criminal Application No. 1836 of 2023 **dated 22/11/2024**

Pankaj S/o Sambhaji Kate

Versus

State of Maharashtra; Kapil S/o Bhaskarrao Ritpure

CRIMINAL PROCEEDINGS QUASHED

Indian Penal Code, 1860 Sec. 415, Sec. 34, Sec. 420, Sec. 463, Sec. 473, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 464 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 468 - Criminal Proceedings Quashed - Applicant sought quashing of FIR and related proceedings alleging fabrication of non-agricultural assessment order for land sale - Alleged offences included forgery and cheating under IPC - Court observed delay of over 12 years in lodging FIR coupled with pending civil dispute over property - Held offences like cheating and forgery not attracted as complainant's allegations did not satisfy legal requirements - No material evidence linked applicant to alleged forgery - Delay in filing FIR not adequately explained; extension of limitation unwarranted - Prosecution found to be abuse of process of law - Quashed FIR and pending criminal proceedings - Application Allowed

Law Point: Initiating criminal proceedings after prolonged delay, especially amidst unresolved civil disputes, constitutes abuse of process where allegations lack evidentiary basis.

Acts Referred:

Indian Penal Code, 1860 Sec. 415, Sec. 34, Sec. 420, Sec. 463, Sec. 473, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 464

Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 468

Counsel:

Manoj D Shinde, A M Phule, Ashwin V Hon

JUDGEMENT

R.W. Joshi, J.- [1] Present criminal application is filed under section 482 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as "Cr.P.C." for brevity), inter alia, praying to quash F.I.R. bearing Crime No.390/2022 registered with MIDC Police Station, Dist. Latur, for the offence punishable under sections 420, 465, 467, 468, 471 read with section 34 of the Indian Penal Code (Hereinafter referred to as "IPC" for brevity), and Regular Criminal Case No. 1824/2022 pending before the learned 3rd Judicial Magistrate, First Class, Latur, which is registered in pursuant to

the charge-sheet bearing No. 376/2022 dated 23.11.2022 filed under section 173 of the Cr.P.C. upon completion of the investigation pursuant to the said F.I.R.

[2] Respondent No.2 is the informant, who has lodged the FIR with respondent No.1. The grievance ventilated in the FIR is in respect of a immovable property being plot of land bearing plot No.1 in Survey No.44/1A of village Khadgaon, Tahsil Latur, District Latur, which is now included within the limits of Municipal Council, Latur. The said plot is hereinafter referred to as "subject plot" for brevity.

[3] Respondent No.2 has stated in the FIR that his mother late Jaishree Bhaskarrao Ritpure had purchased the subject plot from late Chanappa Tukappa Shette vide registered sale deed dated 25.05.1989. He states that the same plot is again purchased by the applicant from Malikarjun Chanappa Shette under sale deed dated 07.12.2010. The allegation in the FIR is that the order of non- agricultural assessment dated 27.08.1987 bearing No.NA/LTR/574/87 has been tampered for the purpose of sale deed dated 07.12.2010 executed in favour of the applicant. The allegation is that instead of survey No.45, survey No.44 is mentioned in the N.A. Order and instead of name of Mr. Kumar, the name of Malikarjun is mentioned therein. The informant states that by such fabrication of N.A. Order, the property which was purchased by his mother and is now owned by him is sold by Malikarjun, accused No.2 to the applicant - accused no.1 for consideration of Rs.5,30,000/- vide sale deed dated 07.12.2010. The other two accused persons are witnesses to the sale deed dated 07.12.2010. Accused No.2 i.e. vendor of the applicant is son of the vendor of the mother of respondent No.2 - informant.

[4] The FIR contains a statement that there is delay in lodging the report, since the matter pertaining to the subject plot was pending adjudication before the Civil Court from 2011 to 2015.

[5] Before coming to the merits of the matter, in order to complete narration of facts it may be stated here that a suit, being Regular Civil Suit No.176/2011, was filed by Jaishree Bhaskarrao Riture, deceased mother of the informant along with her three sons namely Kunal, Kapil (informant) and Gaurav against the applicant (accused No.1) and accused No.2. The suit was filed for seeking perpetual injunction restraining the defendants therein i.e. accused Nos.1 and 2 from disturbing possession of the plaintiff over the subject plot.

[6] The suit was filed on 23.03.2011 and was dismissed vide judgment and decree dated 27.02.2013. Appeal preferred by the plaintiff including the informant being Regular Civil Appeal No.77/2013 came to be allowed vide judgment and decree dated 16.01.2015 passed by the learned District Judge-2, Latur. The present applicant i.e. accused No.1 preferred a Second Appeal challenging the appellate decree dated 16.01.2015, in which the learned Single Judge of this Court was pleased to remand the matter before the learned trial Court, for fresh adjudication by directing to frame an issue with respect to identification of the subject plot. The judgment and decrees

passed by the learned trial Court and the learned first appellate Court have been set aside in Second Appeal. The said Second Appeal is decided vide order dated 11.08.2022. It is informed by the parties that the Civil Suit is still pending. Apart from this, there is also litigation between the parties with respect to mutation entries regarding subject plot.

[7] In this backdrop, it may be noted that FIR has been lodged on 16.07.2022 i.e. approximately a month before 11.08.2022 i.e. the date on which Second Appeal came to be decided.

[8] Based on the FIR, offence has been registered against the present applicant/accused No.1, who is purchaser, his vendor accused No.2 and attesting witnesses to the sale deed, who are arrayed as accused Nos.3 and 4.

[9] Mr.M.D. Shinde, learned counsel for the applicant submits that the applicant is invoking Section 482 of the Cr.P.C., on the grounds that the dispute between the parties is purely a civil dispute and none of the provisions under which the offence is registered are attracted in the facts of the case warranting quashing of the FIR and criminal case initiated pursuant to the said FIR.

[10] Per contra, Mr.A.M. Phule, learned APP appearing for respondent no.1 and Mr.Ashwini Hon, learned counsel for respondent No.2 contend that the order of non-agricultural assessment has been tampered for the purpose of execution and registration of the sale deed dated 07.12.2010 executed by accused No.2 in favour of the present applicant/accused No.1. They contend that fabrication of document for the purpose of cheating respondent No.2-informant is made and as such, all the provisions under which the offence is registered relating to fabrication of documents and cheating are attracted in this case. They further state that merely because the dispute between the parties has a civil dimension, criminal proceeding cannot be quashed, in as much as, a person, who has committed criminal offence cannot be exonerated merely on the ground that civil remedy can also be invoked.

[11] We have heard learned counsel appearing for the respective parties, perused the FIR and charge-sheet and documents filed by the prosecution along with the charge-sheet. We have also perused the judgments delivered by the learned Courts in civil proceeding relating to the subject plot.

[12] The principal contention of the respondents is that the order of non-agricultural assessment is fabricated. The fabrication of the said document is for the purpose of depriving respondent No.2 and his brothers of the immovable property. They contend that offence of forgery is committed by the accused persons by making a false document for the purpose of cheating and as such all the provisions under which the offence is registered are squarely applicable in the present case.

[13] We propose to initially deal with Section 420 of the IPC. Section 420 of IPC which prescribes punishment for the offence of cheating, when a person is deceived to deliver any property to any other person. The essential ingredients of cheating are

prescribed under section 415 of the IPC. Relevant portion of section 415 provides that whoever by deceiving any person, fraudulently or dishonestly induces the persons so deceived to deliver any property to any person or to consent that any person shall retain any property commits offence of cheating. We are not dealing with other aspects of section 415 of IPC, since they do not relate to parting of property, and therefore, may not be relevant in the facts of the present case. What is essential is that there should be an act of deception coupled with fraudulent or dishonest inducement, the person deceiving must part with the property or consent that any person retaining the property. Both these aspects are not attracted. The allegation of the informant is not that he has sold the property to the applicant as a consequence of deception or fraudulent or dishonest inducement. Rather the allegation is that accused No.2 has sold the property to accused No.1 - applicant, thereby affecting his rights over the property. We are afraid that the allegations made in the FIR that property of the applicant and his family members is sold by accused No.2 to accused No.1 even if assumed to be true and correct, will not attract the ingredients of sections 415 and 420 of the IPC. When a person sells a property not belonging to him, the actual or real owner of the property cannot claim that offence of cheating has been committed qua him. In such situation, where a person sells property without having any title over it, it is the purchaser, who may claim that he has been cheated and accordingly may initiate the prosecution against the vendor under section 420 of the IPC. The person, who claims to be owner of the property, cannot invoke section 420 of the IPC against the vendor or purchaser of the property on the ground that the sale transaction is entered into without any title. Therefore, we have no hesitation in holding that section 420 of the IPC cannot be invoked by respondent No.2 - informant and registration of offence under the said provision is completely unwarranted and illegal.

[14] The view that we have taken above is supported by judgment of the Hon'ble Supreme Court of India in the matter of **Mohammad Ibrahim and others Vs. State of Bihar and another**, 2009 8 SCC 751. In the said judgment, the allegations were that accused No.1, who had no concern with an immovable property had sold it to accused No.2. Accused Nos.3, 4 and 5 in the said case were witnesses, scribe and stamp vendor respectively. In these backdrop of facts, the application for discharge was filed, which was rejected and the matter then went upto the Hon'ble Supreme Court. The Hon'ble Supreme Court has summarized the legal position in respect to section 420 of the IPC in such transaction holding that in cases where a property sold by person without any title over the same, it is the purchaser who may invoke section 420 of the IPC in order to prosecute the vendor and not the person claiming to be real owner.

[15] Since the offence of cheating is not attracted, section 468 of the IPC which provides for punishment for offence of forgery for the purpose of cheating will also not be attracted.

[16] As regards offence of forgery, the same is defined under section 463 of the IPC. Section 463 of IPC provides that whoever makes any false document with an intent to cause damage or injury to the public or any person, or to support any claim or title, or to cause any person to part with any property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Thus making of a false document is essential ingredient of the offence of forgery. "Making of a false document" is dealt with in section 464 of the IPC. Alteration of a document without lawful authority, dishonestly or fraudulently amounts to making of a false document. The order of non-agricultural assessment dated 04.09.1987 is alleged by the prosecution to be a forged document. It is alleged that it is forged by the accused persons. In this regard, we may refer to communication at pages 120 and 166 in the charge-sheet issued by API, MIDC, Police Station, in which reference is made to information gathered from the offence of the Collector, wherein it is stated that order of non-agricultural assessment in case No.NAA/LTR-574/87 dated 04.09.1987 is available in the records of the Collector office in which Gut Number of the land is mentioned as Gat No.45 and order is issued in the name of Shri Channappa Tukappa Shete. It is further stated that copy of the order used by accused persons bearing No.NAA/LTR-574/87 dated 04.09.1987 is not available in the records. It will be pertinent to mention here that the learned District Judge-2, Latur has also recorded a finding in paragraphs 28 and 29 of its judgment dated 16.01.2015 delivered in Regular Civil Appeal No.77/2013 relating to the subject plot that the order of non-agricultural assessment which is a part of the sale deed dated 07.12.2010 executed by accused No.2 in favour of accused No.1/applicant is tampered document.

[17] However, there is absolutely no material on record to remotely suggest that the applicant/purchaser has tampered the document or was involved with the alleged act in any manner. The applicant has parted with the consideration for purchasing the subject property. It is not alleged by the informant that the sale is under valued. In the absence of any material to attribute the alleged wrong to the applicant, it will not be appropriate to make him face prosecution particularly when civil proceeding with respect to the subject property is pending adjudication before the competent Court.

[18] However, the order of non-agricultural assessment is annexed to the sale deed dated 07.12.2010 executed in favour of applicant-accused No.1. It also finds a mention in the body of the sale deed. Using a forged document as a genuine is an offence punishable under section 471 of IPC. The offence under section 471 is a cognizable offence. However, the punishment prescribed for the said offence is the same as is prescribed for the offence of forgery. The offence of forgery is punishable with two years as per section 465 of the IPC and as such, the offence for using a forged document in present case will also be punishable with sentence which may exceed to two years. Section 468 of the Cr.P.C. provides for limitation for different category of offences. Section 468(1) states that except or otherwise provided no Court shall take cognizance of offence after the expiry of period of limitation. The provision is couched

in negative terms, which implies that it is mandatory in nature. Section 468(2)(c) provides that for an offence punishable with imprisonment for a term exceeding one year but not exceeding three years, the limitation will be of three years. No Court can take cognizance of a such offence after period of three years. Respondent No.2 has stated in the FIR that he did not file the FIR earlier since dispute with respect to the subject plot was pending before the Civil Court from the year 2011 to 2015. Perusal of the judgment in the civil litigation between the parties would demonstrate that the informant and his family members were aware about the alleged forgery committed with respect to the order of non-agricultural assessment. The FIR is lodged on 16.07.2022. It is clear that there is delay exceeding over a decade in lodging the FIR. The bar under section 468(1) of Cr.P.C. is clearly attracted. It is, therefore, obvious that the applicant cannot be prosecuted for the offence punishable under section 471 of IPC as well. We may note that Section 473 of the Code of Criminal Procedure provides for extension of period of limitation. The power can be exercised in cases, where delay is properly explained or it is felt by the Court, it is necessary to so to do in the interests of justice. As regards the explanation for delay, the informant-respondent No.2 has stated in the FIR that the FIR was not filed earlier since civil dispute was pending till the year 2015. As a matter of fact, Second Appeal arising out of the civil dispute between the parties was decided on 11.08.2022. FIR has been lodged on 16.07.2022 i.e. a month before. The matter is still pending before the learned trial Court since Second Appeal is decided by remanding matter back to the learned Trial Court to frame a issue on identification of property and decide the suit a fresh. There is no explanation whatsoever for delay of seven years from 2015 till 2022. Moreover, the statement that the civil dispute was pending only till 2015 is also incorrect and contrary to record. The delay has not been properly explained. We are also of the opinion that it is not necessary to extend the delay in the interest of justice. Rather allowing the criminal prosecution, which is initiated after a period of around 12 years to continue would amount to abuse of process of law, particularly when civil dispute between the parties is still pending for adjudication before the competent Civil Court. The provisions of Section 468(3) of Cr.P.C. will not be helpful to prosecution to overcome the point of limitation as the facts in the case do not attract Sections 420, 465, 467, 468 of the IPC which prescribe for severe punishments.

[19] Apart from the aspect of limitation, we are of the considered opinion that lodging of a criminal complaint after period over a decade particularly when civil dispute with respect to the subject matter is pending between the parties would amount to abuse of process of law. We are of the opinion that the criminal prosecution cannot be allowed to be continued against the applicant having regard to the delay in lodging the FIR coupled with the fact that civil dispute is pending. We reiterate that taking cognizance of the matter is statutorily barred by section 468 of the Cr.P..C.

[20] We are of the opinion that the prosecution needs to be quashed against the applicant in the light of clauses (i), (iii), (iv) and (vii) of paragraph no.102 in the matter of **State of Haryana Vs. Bhajanlal**, 1992 Supp1 SCC 335/AIR 1992 S.C. 604.

[21] In view of the aforesaid, we are therefore considered opinion that the prosecution of the applicant/accused cannot be allowed to continue and we deem it fit to quash the same. We, therefore, pass the following order:-

ORDER

(i) The application is allowed.

(ii) FIR bearing Crime No.390/2022 registered against applicant-Pankaj Sambhaji Kate with MIDC Police Station, Dist. Latur, for the offence punishable under sections 420, 465, 467, 468 and 471 read with section 34 of the Indian Penal Code and the Regular Criminal Case No.1824/2022 pending on the file of the learned 3rd Judicial Magistrate, First Class, Latur are hereby quashed

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2025(1)MCRJ97

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Karnik; Dr Neela Gokhale]

Criminal Application No 639 of 2019 **dated 21/11/2024**

Ajeet Vikram Bahadur Singh

Versus

State of Maharashtra

DOUBLE JEOPARDY

Constitution of India Art. 22, Art. 20 - Indian Penal Code, 1860 Sec. 285, Sec. 338, Sec. 337, Sec. 287 - Code of Criminal Procedure, 1973 Sec. 300 - Factories Act, 1948 Sec. 92 - Double Jeopardy - Appeal challenged prosecution under IPC Sections 285, 287, 337, and 338 despite prior conviction under Factories Act, 1948 for same incident - Appellant managed industrial unit where mishap caused injury to workers - Convicted under Factories Act with fine imposed as penalty - High Court held prosecution under IPC amounts to double jeopardy violating Constitution Article 20(2) and CrPC Sec. 300 - Emphasized identical nature of offences under special and general statutes arising from same incident - Declared simultaneous prosecutions unsustainable as abuse of process - FIR Quashed - Petition Allowed

Law Point: Prosecution for same incident under IPC and Factories Act constitutes double jeopardy if offences are identical - Violates Article 20(2) and Section 300 CrPC.

Acts Referred:

Constitution of India Art. 22, Art. 20

Indian Penal Code, 1860 Sec. 285, Sec. 338, Sec. 337, Sec. 287
Code of Criminal Procedure, 1973 Sec. 300
Factories Act, 1948 Sec. 92

Counsel:
Sujit B Shelar, Anamika Malhotra

JUDGEMENT

Dr. Neela Gokhale, J.- [1] Rule. Rule made returnable forthwith. With consent of the parties, the Application is finally heard.

[2] The Applicant seeks to quash the FIR No. 100 of 2018 dated 3rd November 2018 registered with Talbid Police Station, Satara for the offences punishable under Section 285, 287, 337 and 338 of the Indian Penal Code, 1860 ('IPC').

[3] The Applicant is the manager of one of the plant/unit of M/s. Pidilite Industries Ltd., located at Plot No.D-5, MIDC, Taswade, Talbid, Tal: Karad, Dist: Satara. The Respondent No.2 ('First Informant') was working as a helper in the aforesaid plant of Pidilite company. The company is engaged in the manufacture of adhesive PVC tapes.

[4] It is the submission of the First Informant as discerned from the FIR that on 26th October 2018 while he was working in the unit, there was a short blaze of fire thrown from the machine on which the First Informant was working. According to him, this was on account of combustion of gas produced in the closed SRP system leading to overheating and in turn leading to the fire. It is his claim that he suffered burns on his face and hands because of the fire and he was required to be hospitalized. He has thus complained that the Applicant was responsible for negligence in maintaining the machinery in the unit leading to the said mishap. Thus, the FIR was registered.

[5] Mr. Sujeet Shelar learned counsel appears for the Applicant and Ms. Anamika Malhotra, learned APP represents the State.

[6] Mr. Shelar has brought to our attention that the Deputy Director of Industrial Safety and Health and the Inspector of Factories also filed two separate criminal complaints bearing numbers 244 of 2019 and 245 of 2019 under Section 92 of the Factories Act, 1948 ('Factories Act') before the Court of the Chief Judicial Magistrate ('CJM'), Satara regarding the same incident. The Applicant pleaded guilty in the said complaint, pursuant to which the CJM, Satara by its order dated 14th February 2019 convicted him under Section 92 of the Factories Act, 1948 and sentenced him to pay Rs.30,000/-, out of which Rs.12,500/- was directed to be paid to each injured victim. Accordingly, the Applicant has deposited the fine amount. The CJM has specifically recorded that the First Informant herein has recovered from his injuries and resumed duties thereafter. He thus submits that having been convicted under the special statute,

i.e., the Act, continuing the proceeding under the IPC amounts to double jeopardy and thus, is an abuse of the process of law.

[7] Mr. Shelar further submits that the issue relating to two parallel proceedings, one under special statute and the other under the general statute, both on the basis of same facts and for the same offence, is no longer res-integra. It is settled position of law that once the person has prosecuted and convicted under the special statute, he cannot be tried again for the same offence under the IPC. He placed reliance upon the following judgments:

1) **T.P. Gopalakrishnan v. State of Kerala**, 2022 14 SCR 478

2) Kola Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr.,2011 15 SCC 498

3) **Mallikarjun K. s/o Thirukappa & Ors. v. State of Karnataka** [In Cri. WP No.201008 of 2014 dtd. 5.4.2016 of Karnataka High Court.]

[8] Mr. Shelar thus urged the Court to quash the FIR impugned herein by allowing the Application.

[9] Ms. Malhotra opposed the application. It is submitted by her that the applicant can be tried for the offence under the IPC as the ingredients of the offence under the Special Statute are different. It is therefore her submission that as the applicant can be tried for the offence under IPC and hence, the application may be dismissed.

[10] We have heard both the parties and perused the record with their assistance.

[11] Admittedly, the Applicant pleaded guilty to the offences as alleged against him under the provisions of the Factories Act. The CJM by his order dated 14th February 2019 convicted him and sentenced him to pay fine in default to suffer simple imprisonment for two months. Part of the fine was paid to the First Informant and the other injured worker.

[12] While determining the issue, it is necessary to expound the provisions of law. Section 92 of the Factories Act, 1948 reads as thus:

> **"92. General Penalty for Offences.-**Save as is otherwise expressly provided in this Act and subject to the provisions of section 93 , if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued:
>
> Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty-

five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

Explanation.--In this section and in section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot."

[13] The aforesaid provision contemplates 'any contravention of any provisions of the Act'. Chapter IV and IV-A of the Factories Act, 1948 deals with provisions relating to safety and hazardous processes. Section 92 encompasses within its purview contravention of any of the provisions of Chapter IV of the Factories Act. Thus, the Applicant has already suffered a conviction under Section 92 of the Factories Act for negligence to maintain the machinery on account of which the First Informant and another worker suffered injuries.

[14] The FIR impugned herein is in respect of offences punishable under Sections 285, 287, 337 and 338 of the IPC. Sections 285 and 287 are offences relating to negligent conduct with respect to fire and/or combustible matter and machinery. Sections 337 and 338 deal with hurt/grievous hurt caused by endangering personal safety of another. It is thus clear that the Applicant has already suffered prosecution and conviction for the same act involving ingredients of the same offences. In our view, since the Applicant has already been prosecuted and punished for the same offences, in the same set of facts, prosecuting him again under the IPC shall amount to double jeopardy.

[15] Part III of the Constitution of India deals with Fundamental Rights. Articles 20 to 22 deal with personal liberty of citizens and others. Article 20(2) expressly provides that no person shall be prosecuted or punished for the same offence, more than once. Article 20(2) of the Constitution of India reads as under:

"20. Protection in respect of conviction for offences.-

(1) xxx xxx xxx

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) xxx xxx xxx "

[16] The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of the Cr.PC. It would also be useful to discuss on the import of Section 300 of the Cr.PC. The said provision has been extracted hereinunder for ready reference:

"Section 300 CrPC- Person once convicted or acquitted not to be tried for same offence.-(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such

offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under subsection (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under subsection (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation. -The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section."

[17] A bare perusal of both the above provisions indicate that Article 20 of the Constitution of India and Section 300 of the Cr.P.C use the term 'same offence'. The term 'same offence' in simple language means where the offences are not distinct, and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India has no application although the offences may have some overlapping features. The crucial requirement of Article 20 is that the offence is the same and identical in all respects.

[18] As discussed above, the Applicant was prosecuted and convicted, albeit having pleaded guilty, for the offences under the Factories Act the ingredients of which are same and identical to the ingredients of the offences for which he is sought to be prosecuted under the Penal Code. Thus, his prosecution on the same set of facts relatable to the same incident is untenable and is not legally sustainable.

[19] We have sought guidance from the decision of the Supreme Court of India and given a thoughtful consideration to those of other High Courts which have been relied upon by the Applicant. The ratio of the decisions referred to above supports our view that so long as an order of acquittal or conviction by a court of competent jurisdiction remains in force, the person cannot be tried for the same offence for which he was tried earlier or for any other offence arising from the same fact situation unless they fall under the exceptions categorized under sub sections (2) to (5) of Section 300 of the Cr.P.C. Admittedly, the factual position in the present case does not fall within the scope and ambit of the exceptions culled out in the sub clauses (2) to (5) of Section 300 Cr.P.C.

[20] The Karnataka High Court in **Mallikarjun** (supra), relying upon a previous decision of the Jharkhand High Court reported in 2007 LLR 886 has gone to the extent of holding that once the criminal complaint has been lodged by the Factory Inspector, the police even lose their jurisdiction to investigate the same matter and file a separate chargesheet arising out of the same incident.

[21] It is relevant to note here that continuing the present proceeding will result in prosecution of the Applicant again by another Magistrate, having already been tried by the Chief Judicial Magistrate for the offences under the Factories Act. This is completely against all the settled norms of criminal jurisprudence and an abuse of the process of law. Even on this count, the second prosecution shall all but fail.

[22] The upshot of the above discussion is that the prosecution of the Applicant pursuant to the FIR impugned herein is in contravention of his fundamental right under Article 20(2) of the Constitution of India and Section 300 of the Cr.P.C. We thus, have no hesitation in quashing and setting aside the FIR impugned herein.

[23] Accordingly, FIR No. 100 of 2018 dated 3rd November 2018 registered with Talbid Police Station, Satara is quashed and set aside.

[24] Rule is thus made absolute in the above terms

2025(1)MCRJ102

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Criminal Revision Application No. 518 of 2002 **dated 21/11/2024**

Siddappa Kashiraya Savli

Versus

State of Maharashtra

DISCHARGE APPLICATION

Indian Penal Code, 1860 Sec. 380 - Discharge Application - Appellant sought discharge from charges in case alleging custodial death linked to third-degree

treatment - Incident arose from investigation of theft complaint; no evidence of appellant instructing or being informed about detainees brought to station - Trial Court discharged superior officer but denied discharge to appellant citing supervisory role - Departmental inquiry revealed appellant was unaware of detainees or alleged treatment - High Court held Trial Court's reasoning insufficient; no prima facie material linked appellant to misconduct - Discharged appellant from charges due to lack of evidence - Discharge Application Allowed

Law Point: Supervisory roles alone do not establish liability in custodial misconduct; discharge warranted absent prima facie evidence linking accused to alleged acts.

Acts Referred:

Indian Penal Code, 1860 Sec. 380

Counsel:

Niranjan Mundargi, Keral Mehta, Manisha Tidke

JUDGEMENT

Milind N Jadhav, J.- [1] Heard Mr. Mundargi, learned Advocate for Applicant and Ms. Tidke, learned APP for Respondent - State of Maharashtra.

[2] The present case challenges the order dated 25.10.2002 passed by learned Trail Court rejecting the discharge Application filed by the Revision Applicant who is original Accused No.2. The Revision Applicant shall be referred to as Applicant for convenience.

[3] At the outset, what is significant is the timeline in the present case. The incident in respect of which prosecution has been launched, occurred on 29.09.1993. Originally there were six Accused out of which one Accused namely Accused No.1 has been exonerated by order dated 25.10.2002 allowing his discharge Application. The incident led to the death of one suspect who was brought and detained by the police officers / team involved with investigation of Crime No.70 of 1993 registered ten days prior to the date of incident on 19.09.1993 under Section 380 of Indian Penal Code, 1860 (for short '**IPC**'). Applicant before me is the Investigating Officer. He was appointed on probation as Police Sub-Inspector at Taloja Police Station on 19.08.1993 and assigned to undertake investigation as Investigating Officer in Crime No.70 of 1993 registered on 19.09.1993 pertaining to theft of gold ornaments from a residential house.

[4] Before I advert to the submissions and merits of the matter as argued by Mr. Mundargi and Ms. Tidke, it is pertinent to refer to the impugned order passed by Sessions Court which is appended at page No.22 of the Application. If the said order is seen then the reason for rejection of discharge Application qua the Applicant before me who had sought discharge is given in paragraph No.6. However on the basis of the same findings returned in paragraph No.6, learned Trial Court has passed order in the

same impugned order discharging Accused No.1 - Vinayak Siddheshwar Joshi, however rejecting the discharge plea of present Applicant - Accused No.2. Accused No.1 is the P.I.- Police Station In-charge where the incident took place and Superior Officer of Applicant. In so far as exoneration of Accused No.1 is concerned, adequate reasons have been enumerated in paragraph No.5 of the impugned order. Court has opined and concluded that there is no evidence on record to show that Accused No.1 - Police Inspector - Mr. Joshi had a common object or intention alongwith the other five Accused including the Applicant (Accused No.2) who have alleged to have taken part in committing the offence leading to death of deceased in custody nor there is any evidence on record to show that he aided or helped the other Accused, including the Applicant in any manner in the offence arraigned against them. Thus in the absence of any evidence to indicate that Accused No.1 participated in any manner in commission of the alleged offence alongwith the remaining Accused, is exonerated and discharged. In the same breath in so far Accused No.2 is concerned, the only singular finding returned by the Court to reject his discharge plea is on the ground that he was in-charge of the investigation of crime as I.O. and Accused Nos.3 to 6 acted upon his directions and arrested the deceased. Save and except this finding / observation there is absolutely no other worthwhile discussion, deliberation on the facts and records of the case investigated qua Accused No.2, the Applicant before me. In so far Accused Nos.3 to 6 are concerned, they have been indicted for carrying out the act and commission of offence of causing hurt to deceased resultantly leading to his death while in custody after he was brought in the Police Station. What is found to be strange is that there are no reasons given by the learned Trial Court while rejecting the discharge plea qua the Applicant, though admittedly in criminal law there is no vicarious liability and therefore the facts of the case need to be considered.

[5] Prima facie, I find that there are no reasons given by the learned Trial Court when it was duty of the Trial Court to consider the evidence prima facie and ascertain whether it conformed to the case made out by the prosecution against Applicant. The finding returned in paragraph No.6 is vague, insufficient and as cryptic as possible because from what has been argued before me by Mr. Mundargi, I find that the relevant material on record has not been considered at all.

[6] Briefly stated, the facts in the present case are that on 19.09.1993 one Mr. Bhau Rama Patil of village Tondare, Taluka - Panvel lodged complaint of theft in his house with Taloja Police Station which was registered as Crime No.70 of 1993 for offence punishable under Section 380 read with Section 34 of IPC against unknown persons. Allegation was that some unknown persons had stolen gold ornaments from his house. Investigation in the crime was undertaken. At that time, Applicant was appointed as Police Sub-Inspector on probation and posted at Taloja Police Station on 19.08.1993. He was assigned as investigating officer in this case of theft. Four constables namely Accused Nos.3 to 6 were assigned to assist Applicant in investigation. It it is prosecution case that on instructions of Applicant deceased -

Pandurang Dharma Patil being a suspect was directed to be arrested and brought to the Police Station. However there is no prima facie evidence on record of any such direction having been given by Applicant as Investigating Officer to Accused Nos.3 to 6 and admittedly and there is no record / entry of Pandurang Dharma Patil being arrested on the ninth day after the date of above incident of theft in the Police Station diary or any other documentary evidence evidencing his arrest and being brought to the Police Station and detained. Pandurang Dharma Patil was brought to the Police Station by Accused Nos.3 to 6 on the intervening night of 28.09.1993 and 29.09.1993 and he was brutally assaulted at midnight. It is prosecution case that Pandurang Dharma Patil strangulated himself in latrine and committed suicide on the following day i.e. 29.09.1993. What is crucial is that Pandurang Dharma Patil was not only the person who was brought to the Police Station and detained as suspect but alongwith him there were two other persons whose names are Bhagwan Rama Patil and Irfan Usman Shaikh. When the incident occurred in the Police Station and when he was brought to the Police Station of which Accused No.1 was the Police Inspector in-charge of the said Police Station at the relevant time, exoneration of Accused No.1 has been allowed by the Trial Court on the ground that he had no knowledge about it. The role of Applicant as Investigating Officer is therefore required to be seen qua discharge of Accused No.1. In support of his submission, Mr. Mundargi has referred to and relied on the decision of Supreme Court in the case of **Ashoo Surendranath Tewari V/s. Deputy Superintendent of Police, EOW, CBI and Another**, 2020 9 SCC 636 .

[7] Before I advert to the merits argued by Mr. Mundargi seeking exoneration and discharge, Mr. Mundargi has placed on record a departmental inquiry order dated 05.11.2019 in the case of Applicant before me pertaining to the subject incident leading to the death of Pandurang Dharma Patil. It is stated in the departmental inquiry order that departmental inquiry pending against the Applicant has been directed to be closed pursuant to recommendation received from the Assistant Commissioner of Police. Needless to state that this direction and order is based upon the material which has been considered by the Police Commissionerate during inquiry. The inquiry officer therein is the Assistant Commissioner of Police who conducted the inquiry and his report has been accepted by the Police Commissioner's Office / Authority. Appended to the said decision are the details of the departmental charge framed against Applicant and recording of the statements of witnesses including two eye witnesses to the said incident. It is seen that in the said departmental inquiry, evidence of 11 witnesses was recorded whose names are appended on internal page No.3 of the inquiry report. Three out of them are Accused Nos.3 to 6. The evidence of the eye witnesses namely Bhagwan Rama Patil who was brought alongwith deceased Pandurang Dharma Patil and Irfan Usman Shaikh to the Police Station on the date / night of the incident is critical and important. It is seen that Bhagwan Rama Patil and another constable Prabhakar Parshuram Patil of Panvel Police Station have deposed in detail about the incident as eye-witnesses to the incident being Government witnesses. That apart,

witness action has already been recorded of the happening of the incident by Accused Nos.3 to 6 in detail. What is relevant for consideration is the evidence of the eye witnesses to the incident namely the incident leading to death of Pandurang Dharma Patil while in custody. It is seen that both eye witnesses have stated as to what exactly transpired. One of the eye witness namely - Prabhakar Parshuram Patil who was working as Police Havaldar has stated that on 28.09.1993 after his duty got over at 21:00 hours at night before that Police Inspector - Mr. Vinayak Joshi directed them to bring Irfan Shaikh and Rashid for inquiry with respect to Crime No.71 of 1993 as according to him there would be probability of proceeding with the investigation in the crime of theft. Thereafter he has stated that the Applicant had given oral directions to bring Pandurang Dharma Patil and Parshuram Rama Patil for inquiry to the Police Station. If such directions were given by Accused Nos.1 and 2 both, verbally, then there is no reason for disparity to be shown to Applicant - Accused No.2 when Accused No.1 stands exonerated.

[8] Be that as it may Accused No.2 was the Investigating Officer and therefore what is crucial is that whether any of the directions or instructions given by the Investigating Officer as alleged were delineated in the station diary or in any other relevant official record is not presented before the Court. The question before me is assuming that even on the instructions and directions of Accused Nos.1 and 2, suspects were brought to the Police Station, whether after they were brought if any entry was made in the Diary or record maintained at the Police Station. The answer to all these questions is "None". The said departmental order thereafter records statement of another eye witness to the incident which is on the same lines. The conclusion of the said inquiry clearly records that Accused Nos.3 to 6 brought Bhagwan Rama Patil and Pandurang Dharma Patil to the Police Station and had beaten them mercilessly, before bringing them and detaining them. What is crucial to be considered here is that the fact that Bhagwan Rama Patil and Pandurang Dharma Patil were brought to the Police Station was not informed to the Applicant even though he was the I.O. in the case. Further conclusion has been arrived on the basis of statements recorded in the inquiry that Applicant was not even informed about the third degree treatment meted out to the deceased whether previously or in the Police Station ultimately leading to the death of Pandurang. The crucial eye witness Irfan Shaikh brought alongwith Bhagwan Rama Patil and Pandurang Dharma Patil has categorically stated that Applicant never presented himself at the place where he was detained in the Police Station. Another Police officer namely Police Sub-Inspector - Arun Mali who was on night duty on 28.09.1993 has also deposed that even he was not informed by the staff member i.e. the police constables who brought Pandurang Dharma Patil and Bhagwan Rama Patil to the Police Station on the night of the incident. Police Sub-Inspector - Mr. Arun Mali has deposed that he was posted on night duty in the Police Station on that same date. The said inquiry has concluded by returning a finding that no entry was made of having brought the deceased alongwith the other two accused in the Police station

diary which is mandatory nor the fact was informed to the Investigating Officer i.e. the Applicant before. This evidence in the departmental inquiry of several eye witnesses to the incident on the intervening night of 28.09.1993 and 29.09.1993 is material and relevant. It is on record. All that the learned Trial Court has stated in the impugned order is that it has gone through the papers of investigation. If that be the case it ought to have found place in the impugned order, sadly it is not so. No purpose will be served after 22 years after having admitted the present Revision Application to remand it back for reconsideration, only because the order is as cryptic as possible. What is crucial and it goes against the case of prosecution is the fact that there is no material placed on record to show that Applicant before me had knowledge of the fact that the three persons were brought to the Police Station by Accused Nos.3 to 6 and going further that he had given any direction to bring them in for inquiry. What has transpired in the interregnum that all three arrested persons were meted out third degree treatment by Accused No.3 to 6, resultantly leading to death of one of them is in respect of which Sessions Case No.172 of 2000 was tried.

[9] Prima facie on the basis of material available on record and cryptic reason given by the learned Trial Court in paragraph No.5 of the order dated 25.10.2002, I do not see any reason as to how the said reason can be made attributable to the Applicant before me without there being any prima facie material in support thereof. It is a different case that today the material which has been placed on record is pursuant to departmental inquiry which has been conducted. Had the papers in the departmental inquiry not been placed before the Court, it would have been difficult for this Court to ascertain the role of Applicant in the present case. The depositions and findings in the departmental inquiry corroborate the case of Applicant before me. If challenge is maintained to the order dated 25.10.2002, Mr. Mundargi in his usual fairness would submit that he would not like to challenge the findings returned in paragraph No.5 relating to discharge of Accused No.1. This conduct of Mr. Mundargi of pointing this out to the Court is appreciated by the Court, otherwise it would lead to anarchy, if the impugned order is quashed and set aside in its entirety. On the basis of the above observations and findings, impugned order dated 25.10.2002 is clearly unsustainable in law to the extent of rejection of Applicant's discharge plea. The Applicant i.e. Accused No.2 deserves the same treatment and parity as that of Accused No.1 who has been exonerated, specifically in view of the fact that not only he was not informed about the bringing of three suspects to the Police Station by Accused Nos.3 to 6 but no instructions were given by him to them so as to indict his role in the death of one of the suspect due to third degree treatment whilst in custody.

[10] In view of the above, impugned order dated 25.10.2002 is quashed and set aside to the extent of directions contained in paragraph No.6 and unumbered paragraph No.2 in the operative part of the impugned order. Resultantly, the discharge Application filed by Applicant - Accused No.2 in Sessions Case No.172 of 2000

stands allowed by Court. The Applicant - Mr. Siddappa Kashiraya Savli is hereby discharged from the offence chargesheeted against him.

[11] With the above directions, the Criminal Revision Application stands allowed and disposed

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2025(1)MCRJ108

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Jitendra Jain]

Writ Petition No. 4339 of 2024 **dated 19/11/2024**

Mahindra and Mahindra Ltd

Versus

Union of India; Office of Commissioner of Customs(Export); Deputy Commissioner of Customs Deec (M Cell); Additional Director General of Foreign Trade

INORDINATE DELAY

Customs Act, 1962 Sec. 143, Sec. 28 - Inordinate Delay - Petition challenged notice issued under Customs Act Sec. 143 for recovery of duty foregone due to non-submission of Export Obligation Discharge Certificate issued 26 years earlier - Petitioner argued proceedings barred by unreasonable delay despite absence of statutory limitation - High Court emphasized reasonable period must guide actions where statute is silent - Compared timelines in Sec. 28 of Customs Act, providing 5 years for fraud cases, to highlight disproportionate delay - Found no allegations of fraud or suppression; termed 26-year delay unreasonable and unjustifiable - Quashed notice citing precedent supporting timely adjudication - Petition Allowed

Law Point: In absence of statutory limitation, recovery actions under Customs Act must adhere to reasonable timeframes to ensure fairness and avoid arbitrary delays.

Acts Referred:

Customs Act, 1962 Sec. 143, Sec. 28

Counsel:

Bharat Raichandani, Jasmine Dixit, U B R Legal, Karan Adik, J B Mishra, Ashutosh Mishra, Vikas Salgia

JUDGEMENT

[1] Rule. Rule is made returnable immediately at the request and with the consent of the parties.

[2] By this petition under Article 226 of the Constitution of India, the petitioners are challenging the notice dated 15 December 2022 issued by respondent no.2 seeking to recover duty foregone under Section 143 of the Customs Act, 1962, for non-

submission of the Export Obligation Discharge Certificate against Advance Authorization No.31000796, dated 23 September 1996.

[3] Mr Raichandani, learned counsel for the petitioner, submits that the impugned notice is issued to recover the duty for the non-submission of the Export Obligation Discharge Certificate dated 23 September 1996. It is his submission that the impugned proceedings are hopelessly barred by delay inasmuch as the proceedings are initiated after almost 26 years. It is his submission that although there is no limitation provided under the Customs Act, the proceedings ought to have been taken within a reasonable period and a period of 26 years cannot be treated as a reasonable period in the facts and circumstances of the case. Mr. Raichandani relied upon the Supreme Court's decision in the case of Union of India vs. Citi Bank,2022 382 ELT 293 (S.C.) in support of his submission.

[4] Mr. Adik, learned counsel for the respondents submits that under Section 143 of the Customs Act, no time limit is provided for enforcement of the bond executed. Therefore, the impugned notice is not barred by limitation. Thus, he submits that the present petition is devoid of any merit on the grounds of limitation. He made no other submission on behalf of the respondents.

[5] We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

[6] Admittedly, there is no dispute that no time limit is provided under Section 143 of the Customs Act for recovery of duty foregone. However, it is a settled position that where the Act is silent on the limitation, the proceedings have to be initiated within a reasonable period, and the said reasonable period has to be ascertained based on a holistic reading of the Scheme of the Act. In the instant case, admittedly, the impugned notice is issued for non-submission of Export Obligation Discharge Certificate dated 23 September 1996, after almost 26 years.

[7] In our view, on a reading of the Customs Act, the reasonable period for initiating any proceedings for recovery of dues can certainly not be 26 years, even where a bond may have been executed. Section 28 of the Customs Act, and that too, in a case where suppression or fraud is alleged, provides a time limit of 5 years. This period gives a clue and could, therefore, provide guidance in determining a reasonable time when the legislature offers no specific time limit. In this case, there are no allegations of any fraud or suppression. Therefore, there is nothing reasonable in seeking to make recoveries after 26 years. Not even an attempt is made to explain this inordinate delay.

7. Mr. Adik also could not point out that the proceedings initiated after 26 years can be considered reasonable. Therefore, in our view, the proceedings commenced by the impugned notice dated 15 December 2022 are barred by inordinate and wholly unexplained delay.

[8] Mr. Raichandani is justified in relying on the Supreme Court's decision in the case of **Union of India Vs. Citi Bank (supra)**, where the show cause notice under FERA issued almost a decade after the transaction date, was quashed on the grounds of delay in initiating the proceedings. The Co-ordinate Bench of this Court in the case of **Coventry Estates Pvt. Ltd. Vs. The Joint Commissioner, CGST and Central Excise & Anr.** [Writ Petition No.4082 of 2022 vide order dated 25 July 2023] has analyzed this issue of delayed adjudication and quashed the notices where the adjudication was proposed after a gross delay. This Bench has subsequently and consistently followed the decision.

[9] Given the above, respectfully following the decision of the Supreme Court and the Co-ordinate Bench, the impugned notice dated 15 December 2022 is quashed and set aside.

[10] Rule is made absolute in the above terms. Accordingly, this petition is disposed of

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2025(1)MCRJ110

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Bharati Dangre; Manjusha Deshpande]

Criminal Writ Petition No 3634 of 2016 **dated 18/11/2024**

Manoj Suryakant Dalvi

Versus

State of Maharashtra; Tina Suny John

QUASHING FIR AND CHAPTER PROCEEDINGS

Indian Penal Code, 1860 Sec. 354 - Code of Criminal Procedure, 1973 Sec. 107 - Quashing FIR and Chapter Proceedings - Appellant sought quashing of FIR and Chapter Proceedings initiated after a complaint alleging offence under Section 354 IPC-Complaint involved alleged physical contact while attempting to recover a misidentified bag at Mumbai Airport - High Court noted absence of intent or actions constituting outraging of modesty-Concluded allegations were baseless, motivated by earlier altercation with complainant's husband - Held proceedings under Section 354 IPC and related Chapter Case unwarranted and quashed chargesheet and proceedings under Section 482 CrPC - Proceedings Quashed

Law Point: Allegations under Section 354 IPC must demonstrate intent to outrage modesty-Absence of intent or indecent action invalidates prosecution and subsequent Chapter Proceedings.

Acts Referred:

Indian Penal Code, 1860 Sec. 354

Code of Criminal Procedure, 1973 Sec. 107

Counsel:

Ashutosh S Khandeparkar, J P Yagnik, Mukund S Mane

JUDGEMENT

Manjusha Deshpande, J.- [1] The Petitioner is in service with the IndiGo Airlines as Assistant Security Manager. He is seeking directions to quash and set aside the proceedings pending before the 66th Metropolitan Magistrate Court, Andheri, Mumbai, in Criminal Case No.1051/PW/2016. The Petitioner is also seeking to quash and set aside the Chapter Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai.

[2] The Writ Petition is filed against the First Information Report (FIR) No.2 of 2016, registered at Airport Police Station, Santacruz, Mumbai on 12.01.2016, on complaint of one Mrs.Tina John, Respondent No.2, alleging offence punishable under Section 354 of the Indian Penal Code (IPC) against the Petitioner.

As per the FIR filed by Respondent No.2, while she was travelling alongwith her husband, daughter-in-law and granddaughter from Kochi to Ahmedabad via Mumbai on 12.01.2016, when their fight reached Mumbai at 03:30 p.m., the staff of IndiGo Airlines was checking the boarding pass of the passengers. It is alleged that the husband of the complainant Mr.Sunny John wanted to use the lavatory but he was not allowed to use it. Since he was in urgent need of using the lavatory, he requested the ground staff to allow him to use it but on the pretext that the cleaning of the lavatory is under progress he was not allowed to use the lavatory.

When the husband of the complainant saw that the pilot of the said plane had used the lavatory, he again requested the ground staff to allow him to use the lavatory since he needed it to use urgently, but his request was not considered by the ground staff. Hence, he caught hold the hand one of the IndiGo staff of the IndiGo Airlines and took him to the lavatory indicating him that no one is there in the lavatory.

Thereafter, Mr.Sunny John, the complainant and her daughter-in-law all of them used of the lavatory and went to their respective seats in the Aircraft. After some time, some of the people from the ground staff, namely, Manoj, Preeti and some of the security personal from CISF of Santacruz Airport, approached them and informed that since he had manhandled the staff of the Airlines, he will not be allowed to travel further. He was directed to deplane or else the plane will not be allowed to fy. The husband of complainant was thereafter taken outside the plane, she also followed him.

When she came out, one of the ground staff of the IndiGo Airlines brought one bag and handed it over to the her. On looking at the bag, the husband of the complainant informed her that the bag did not belong to them. At that point of time, a boy named Manoj approached her for taking away the bag.

When she refused to hand over it, he held her hand and tried to pull the bag. Since she wanted to demonstrate to the police that, the staff of the Airlines were not diligent

while handling the baggage of passengers therefore she did not relieve her hold on the bag. The concerned staff, namely, Manoj caught hold of her hand tightly and again tried to pull the bag from her. Thereafter, all their belongings were removed from the plane and alongwith luggage they were taken to arrival gate by the CISF officials. Hence, the complainant had approached the Airport Police Station by filing the complaint against the ground staff of IndiGo Airlines.

It is on this background, the complainant has filed FIR alleging that the present Petitioner i.e. Manoj had caught her hand while removing the bag forcibly from her hands, and, therefore, the said conduct of Manoj of holding her hand amounts to outraging modesty.

[3] The Airport Police Station, Santacruz, Mumbai filed charge against him before the learned Metropolitan Magistrate 66th Court at Andheri, Mumbai. The Airport Police Station, Santacruz, Mumbai has also initiated Chapter proceedings bearing No.59 of 2016 in Chapter Case No.17 of 2016 against the Petitioner under Section 107 of the Code of Criminal Procedure, which is pending before the Additional Special Executive Magistrate, Airport, Mumbai. The Petitioner has been called upon to sign a bond of Rs.5,000/- for good conduct.

It is the contentions of the Petitioner that the allegations made by the Airport Police Station, Santacruz, Mumbai, against him in the said Chapter proceedings are in the background of the FIR No.2 of 2016, registered by complainant against the Petitioner.

The Petitioner has approached this Court for quashing the Chapter case as well as the chargesheet bearing C.C.No.1051/ PW/2016, pending before the learned 66th Metropolitan Magistrate Court, Andheri, Mumbai.

[4] When the matter was heard on 09.03.2017, this Court had granted interim relief in terms of prayer Clause (f), thereby the proceedings in Chapter Case No.17 of 2016, were stayed. Thereafter, when the matter was listed before this Court on 10.01.2018, the proceedings relating to the FIR bearing No.2 of 2016 at Airport Police Station, Santacruz, Mumbai, were stayed till further orders. Subsequent thereto the matter was listed from time to time and on 22.11.2018 'Rule', was granted and interim order passed earlier was directed to be continued.

[5] We have heard the learned advocate for the Petitioner Mr.Khandeparkar.

It is the contention of the Petitioner that he was discharging his duty as usual and since he was part of the 'service' industry and he is trained to handle such situation, and he is also trained not to hurt sentiments of any person. He had not acted in any manner which would be detrimental to him, his company, and even to the passengers, travelling in the plane of the Airline. Being an Assistant Manager, Security, it is his job to ensure the safety and security of all the passengers, staff and in general to maintain the safety and security. Due to the FIR lodged against him by the complainant, which was followed by the chargesheet, his entire career and reputation

is at stake and hence, the chargesheet and FIR is filed against him is nothing but abuse of process of law.

[6] Learned advocate Mr.Khandeparkar submits that, merely holding hand while removing the bag from the hand of complainant which belonged to some other passenger, would not attract Section 354 of the IPC, as he has not acted in any manner intending to outrage or knowing it to be likely that he will thereby outrage modesty of the complainant, as alleged. According to the Petitioner the complainant has misused the provision of Section 354 of IPC. She has filed the complaint with an intention, to avoid the complaint which was likely to be filed against her and her husband because of their manhandling of the ground staff of the Airlines.

[7] The Petitioner has placed on record the chargesheet, which contains the statement of witnesses who were present during the said incident. One of them is the cabin attendant of the Airlines Smt.Dimple Deepak Gupte, who has categorically stated in her statement that, the complainant has snatched the bag from the hands of the Petitioner and he had done nothing to outrage her modesty. Inspite of that, the complainant started making hue and cry.

[8] The learned counsel Mr.Mane appearing for the complainant Respondent No.2 has opposed the prayer made by the Petitioner contending that the chargesheet is already filed, and, therefore, the proceedings filed by the complainant are required to be taken to its logical end.

We have perused the FIR. Bare perusal of the FIR discloses that the Petitioner who is Assistant Security Manager had made an attempt to hand over her luggage to the complainant, therefore he had brought certain bags from the plane so that the complainant could identify her own luggage. When the husband of the complainant informed the complainant that the bag in her hand did not belong to them and that, she had wrongly taken the bag, the Petitioner merely tried to remove the bag from the hands of the complainant. From the narration of the complaint itself it is obvious that because of the incident wherein the husband of the Petitioner had manhandled the staff of the Airlines, they were required to deboard the plane and as a result, they were enraged due to the said incident. When they were required to deboard the plane, they felt insulted, and as a counter, the complainant levelled baseless allegations against the Petitioner.

From the purport of Section 354 of IPC, it will have to be gathered whether conduct of the Petitioner comes within the purview of Section 354 of the IPC, which reads thus:

354. Assault or criminal force to woman with intent to outrage her modesty. - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine..]

From the contents of Section 354 of IPC, it is evident that there should be intent on the part of a man to use force against any woman with intention to outrage her modesty.

Since the word, 'Modesty', has not been defined in the IPC, the dictionary meaning of Modesty will have to be taken into consideration. In Oxford English Dictionary, the meaning of the word, 'Modesty', is given as, 'womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions.'

The 'intention' of a person is important in order to prove offence under Section 354 of IPC, since intention and knowledge are not capable of being proved by any evidence, however, it will have to be gathered or inferred from the attending circumstances of the case. So far as the present case is concerned, from the narration of the incident by no stretch of imagination, such an intent can be attributed to the Petitioner, wherein he is merely alleged to have held the hand of complainant in order to take away the bag, which did not belong to her. Therefore, in our view, from the contents of the FIR, itself no offence under Section 354 of the IPC is made out in complaint against the present Petitioner.

[9] Recently this Court while addressing the issue on the scope of Section 354 of the IPC has held in the case of **Nitin Upadhyay and Anr. Vs. The State of Maharashtra** in Criminal Writ Petition (St.)No.13234 of 2024 (Coram: Revati Mohite Dere and Prithviraj K. Chavan, JJ.) in its order dated 05.08.2024, that, in order to attract Section 354 of IPC, certain ingredients are necessary, such as:

(i) The assault must be on a woman;

(ii) The accused must have used criminal force on a woman; and

(iii) The assault or criminal force must have been used with intent to outrage or knowing that the accused thereby would outrage her modesty.

This Court had further relied on the judgment in case of **State of Punjab Vs. Major Singh**, 1967 AIR(SC) 63 , wherein the observations in paragraph 4 and 16, were reproduced, which read thus:

"4. I would first observe that the offence does not, in my opinion, depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the section are that the act has to be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty". This intention or knowledge is the ingredient of the offence and not the woman's feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of

course not the same-, it varies from woman to woman. In many cases, the woman's sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage "her" modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, in my opinion, the reaction of the woman would be irrelevant.

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16. I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the fesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.]

[10] The essential ingredient to attract Section 354 is intent to outrage or the knowledge that by the offending act, the accused would outrage the modesty of a woman, whereas, the assault or use of criminal force to a woman simpliciter unaccompanied by such a state of mind may not fall within the four corners of the offence under Section 354 of the Penal Code, though the accused may be liable for having committed some other offence. Applying the above observations made by this Court, we do not find that even in the FIR, any such statement is made by the Petitioner as there is no indecent assault or criminal force used by the Petitioner.

From the contents of the complaint, it appears that in a spur of a moment, sudden incident of snatching the bag occurred between the Petitioner and the complainant, wherein there was no use of indecent assault, therefore, we do not find any substance in the accusation made in the First Information Report.

[11] While considering the prayer of the Petitioner for quashing the proceedings pending before the Special Executive Magistrate, Airport, Mumbai, we have to consider whether this is a fit case for exercising our inherent powers under section 482 of the Cr.P.C., or the extra ordinary jurisdiction under Article 226 of the Constitution of India, to quash the FIR or criminal proceedings on the ground that they are instituted with ulterior motive. In this context, it would be appropriate to rely on the observations of the Hon'ble Apex Court in case of Mohmood Ali and Ors. Vs. State of U.P. and Ors.,2023 SCCOnlineSCC 950 , wherein the Hon'ble Apex Court has held that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the

averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India, Courts need not restrict itself only to the stage of a case, but is empowered to take into account the overall circumstances leading to the initiation/registration of the case, as well as the materials collected in the course of investigation.

Since the Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai, are consequence of filing of FIR No.2 of 2016, the consequential proceedings will also have to be set aside as a necessary corollary.

In view of the observations of the Apex Court, in our view this is a fit case for exercising our power under Section 482 of the Code of Criminal Procedure to quash and set aside the chargesheet and proceedings pending against the Petitioner C.C.No.1051/PW/2016, pending before the learned Metropolitan Magistrate 66th Court at Andheri, Mumbai alongwith Chapter Proceedings bearing Case No.59 of 2016 in Chapter Case No.17 of 2016, pending against the Petitioner before the Additional Special Executive Magistrate, Airport, Mumbai/66th Metropolitan Magistrate Court, Andheri, Mumbai, in Criminal Case No.1051/PW/2016.

Rule is made absolute in terms of prayer Clauses (b) and (d) of the Petition

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2025(1)MCRJ116

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sarang V Kotwal; Dr Neela Gokhale]

Criminal Application No 978 of 2024 **dated 13/11/2024**

Rushik Rajendra Shah & Ors

Versus

Ruchika Rushik Shah & Anr

PROCEEDINGS QUASHED

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 307, Sec. 325, Sec. 498A, Sec. 323 - Code of Criminal Procedure, 1973 Sec. 482 - Hindu Marriage Act, 1955 Sec. 13B - Dowry Prohibition Act, 1961 Sec. 4, Sec. 3 - Proceedings Quashed - Application sought quashing of FIR and charge-sheet alleging cruelty, assault, and dowry harassment - Divorce by mutual consent obtained under Sec. 13B HMA - Consent terms addressed custody, child's future, and ensured non-interference in personal lives - Court noted compromise between parties, absence of further evidence, and focus on child's welfare - Held continuation of criminal proceedings unwarranted - FIR quashed - Application Allowed

Law Point: Criminal proceedings involving private disputes can be quashed under Sec. 482 Cr.P.C. if settlement is reached and continuation would not serve justice or societal interests.

Acts Referred:

Indian Penal Code, 1860 Sec. 504, Sec. 34, Sec. 307, Sec. 325, Sec. 498A, Sec. 323

Code of Criminal Procedure, 1973 Sec. 482

Hindu Marriage Act, 1955 Sec. 13B

Dowry Prohibition Act, 1961 Sec. 4, Sec. 3

Counsel:

Shyamrishi Pathak, Gayatri P, Jyoti Barai, Anand S Shalgaokar, Rimpal Trivedi, Harshada Bhanushali

JUDGEMENT

[1] Leave to amend to correct the typographical errors. Amendment shall be carried out by the learned counsel for the applicants forthwith.

[2] Heard Mr. Shyamrishi Pathak, learned counsel for the Applicants, Mr. Anand Shalgaokar, learned APP for the State and Ms Rimpal Trivedi, learned counsel for the Respondent No.1.

[3] This is an application for quashing of the F.I.R. registered vide the C.R.No.40 of 2017 with Malabar Hill police station and the consequent charge-sheet filed before the J.M.F.C., 40th Court, Girgaon vide the C.C.No.437/PW/2017, for the offences punishable under sections 498A, 325, 323, 307, 504 r/w. 34 of the I.P.C. and U/s.3 and 4 of the Dowry Prohibition Act.

[4] The F.I.R. is lodged by the Respondent No.1 (hereinafter referred to as the 'informant'). The Applicant No.1 is her husband. The Applicant Nos.2, 3 and 4 are the brother, father and mother of the Applicant No.1. The Applicant No.5 is wife of the Applicant No.2.

[5] The F.I.R. mentions that the informant got married with the Applicant No.1 on 25.02.2011. It is mentioned that the informant's family was not very happy with the alliance, but at her instance the marriage took place. After the marriage, she started residing with the Applicant Nos.1 to 4. There are allegations that the Applicant No.4 used to taunt her on petty issues. All the applicants used to abuse her. The Applicant Nos.2 and 5 got married subsequently. There is a reference to other criminal cases against the Applicant Nos.1, 2 and 3. On all such occasions, the informant's father had paid some money to help the applicants' family financially. In spite of that, the informant was physically and mentally harassed. The informant delivered her son on 20.11.2014. On one occasion, she had consumed sleeping pills out of frustration, for which, she had to take treatment. The F.I.R. mentions one particular instance dated 16.04.2017, wherein, she was assaulted by the Applicant No.1 on her nose causing bleeding from the nose. She called her parents. When they came to her matrimonial

house, even her father was slapped by the Applicant No.3. There are allegations that, because of the assault she suffered nose fracture. Her stridhan was retained in their joint locker by the applicant No.4. On these allegations, the F.I.R. was lodged. The investigation was carried out and the statements of various witnesses were recorded. Those witnesses included the informant's parents, uncles, cousins and an employee in her matrimonial house. All these statements are similar to the allegations in the F.I.R. There is a report from the St. Elizabeth's Hospital showing that the informant had suffered fracture of her nasal bone. On this basis the charge-sheet was filed.

[6] During pendency of these proceedings, the informant had also initiated the proceedings under the Protection of Women from Domestic Violence Act and also the divorce proceedings. While the divorce proceedings were pending, the matter was settled between the parties and the consent terms were filed before the Family Court at Bandra, Mumbai, in M.J. Petition No.A655 of 2022. Vide the Judgment and Decree dated 23.10.2024, divorce by mutual consent was granted to the parties. Pursuant to the consent terms, the proceedings under the D.V. Act were withdrawn. The informant has filed her Affidavit in this Court giving her no objection for quashing the present charge-sheet. The Affidavit is taken on record.

[7] We have heard the parties. The informant is present in the Court. She is identified by her counsel. She submitted that, she is relying on the consent terms and the affidavit filed in the Court today. She also submitted that, she has no objection for quashing of the proceedings which are the subject matter of the present application.

[8] We have considered this situation and we have perused the consent terms and the affidavit. The consent terms mention that the divorce proceedings were filed by the informant on merits. It was agreed that the matrimonial petition would be converted into a petition for divorce by mutual consent U/s.13B of the Hindu Marriage Act. There is a reference in paragraph-3 of the consent terms that the parties shall take steps within 10 days of filing of the consent terms in the Family Court by filing quashing petition before this Court in connection with the aforesaid C.R. number. The consent terms are quite elaborate and make a provision that the custody of the child was to remain with the informant. Paragraph-16 of the consent terms mentions that the husband shall have no objection if the informant wanted to marry in future and if her future husband wanted to adopt their son. There is a clause mentioned in paragraph-11 reserving liberty to the parties to initiate fresh litigation for non compliance of the consent terms; including initiation of perjury proceedings. Paragraph-28 mentions that the parties shall not interfere in each others' personal life after the decree of divorce. All these consent terms are quite elaborate. They also provide for the consequences if those terms are not complied with. The consent terms specifically take care of the future of the child. Therefore, it would be in the best interest of both the parties if the application is allowed and the proceedings are quashed.

[9] Learned APP pointed out that, in this case, the charges are already framed.

[10] Learned counsel for the Applicants submitted that the charges were framed and then they were altered. That particular charge was challenged by the applicants before the Sessions Court and those proceedings are still pending.

[11] In this situation, we considered whether we can exercise the jurisdiction U/s.482 of the Cr.p.c. and under Article 226 of the Constitution of India for quashing the proceedings on the ground of settlement. In that regard, a reference can be made to the Judgment of the Hon'ble Supreme Court dated 29.09.2021 passed in Criminal Appeal No.1489 of 2012 in the case of Ramgopal & Anr. Versus The State of Madhya Pradesh with Criminal Appeal No.1488 of 2012 in the case of Krishnappa & Ors. Versus State of Karnataka. The Hon'ble Supreme Court had considered the facts in both these appeals. The facts regarding Criminal Appeal No.1489 of 2012 show that the accused in that case were convicted by the learned J.M.F.C., Ambah for the offences punishable under sections 294, 323 and 326 r/w. 34 of the I.P.C. with the maximum sentence of three years. That order was challenged before the Sessions Court at Ambah. During pendency of that Appeal, the matter was settled between the parties. The learned Sessions Judge permitted compounding of the offence U/s.294 and 323 r/w. Section 34 of the I.P.C. and maintained the conviction U/s.326 r/w.34 of the I.P.C.; as the said section was 'non-compoundable' within the scheme of Section 320 of the Cr.p.c. However, quantum of the sentence was reduced to one year. The accused preferred a Criminal Revision Application before the High Court of Madhya Pradesh for compounding of the offence based on the compromise entered into between the parties. However, the High Court of Madhya Pradesh did not accede to that prayer reiterating that the offence was non-compoundable. However, the duration of the imprisonment was further reduced to that which was already undergone by the accused. The accused further challenged that particular order of the Madhya Pradesh High Court before the Hon'ble Supreme Court seeking compounding of the offenec U/s.326 of the I.P.C. In this background, the Hon'ble Supreme Court considered the scope of power U/s.482 of the Cr.p.c. Paragraph-13 and 19 of the said Judgment in that behalf are relevant and, therefore, we are relying on those paragraphs. The said paragraphs read thus:

> **"13.** It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for

exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in **Narinder Singh & Ors. vs. State of Punjab & Ors.**, 2014 6 SCC 466 and in **State of Madhya Pradesh vs. Laxmi Narayan & Ors.**, 2019 5 SCC 688.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: **(i)** Nature and effect of the offence on the conscious of the society; **(ii)** Seriousness of the injury, if any; **(iii)** Voluntary nature of compromise between the accused and the victim; & **(iv)** Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

[12] The Judgment of the Hon'ble Supreme Court considers the powers U/s.482 of the Cr.p.c. post conviction. Therefore, even at this early stage, after framing of the charge the same powers under the same parameters can be used, particularly when the recording of evidence has not yet started. In this case, the Applicants have not challenged the charges framed by the trial court on merits of the matter. The quashing of the proceedings is sought on the ground of settlement between the parties. Therefore, we are exercising our powers U/s.482 of the Cr.P.C. and under Article 226 of the Constitution of India to secure ends of justice, in the interest of the parties and to prevent abuse of process of law in view of the settlement.

[13] In this particular case before us, we are keeping future of the parties and, in particular, that of the child before us, as paramount consideration. The consent terms takes care of the future of the child and they provide consequences if the terms of the consent terms were violated which would be damaging the future of the Respondent No.1, as well. Though, there are allegations of assault attracting Section 325 of the I.P.C., the Respondent No.1 has decided to give no objection for quashing of the proceedings. Therefore, continuation of the criminal proceedings would not serve any purpose. The parties have decided to lead their life separately in peace in future. Therefore, in the interest of justice, in the given facts and circumstances of this particular case, we are inclined to allow this application.

[14] Hence, the following order:

O R D E R

i) The F.I.R. registered vide the C.R.No.40 of 2017 with Malabar Hill police station and the consequent charge-sheet filed before the J.M.F.C., 40th Court, Girgaon vide the C.C.No.437/PW/2017, are quashed and set aside.

ii) The Application is disposed of

2025(1)MCRJ121

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Vinay Joshi; Vrushali V Joshi]

Criminal Appeal No 128 of 2022 **dated 12/11/2024**

Kamlesh S/o Narayan Dubey; Shekhar S/o Chandrakishor Dubey

Versus

State of Maharashtra

CONVICTION FOR MURDER

Indian Penal Code, 1860 Sec. 34, Sec. 300, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 235 - Bombay Police Act, 1951 Sec. 135 - Arms Act, 1959 Sec. 25, Sec. 4 - Conviction for Murder - Appeal by two appellants convicted for murder under Section 302 read with Section 34 of Indian Penal Code - Prosecution alleged appellants Kamlesh and Shekhar murdered deceased by stabbing and running vehicle over him - Incident occurred after altercation at dumping yard where deceased confronted Kamlesh about a previous dispute - Prosecution's evidence included three eye witnesses and medical testimony confirming severe stab and crush injuries on deceased - Appellants argued absence of intention, contending incident occurred on sudden provocation and questioned consistency of eye witness accounts - Trial Court found evidence consistent, indicating premeditated intent and brutal manner of execution - High Court upheld conviction, rejecting applicability of Exception 4 to Section 300 IPC, noting act was committed with deliberate intent, using deadly weapons, and exhibited cruelty - Appeal Dismissed

Law Point: For murder conviction, premeditation and brutality demonstrated in manner of execution negate applicability of sudden provocation exception under Section 300 IPC; common intention may be inferred from coordinated assault on victim.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 300, Sec. 302

Code of Criminal Procedure, 1973 Sec. 235

Bombay Police Act, 1951 Sec. 135
Arms Act, 1959 Sec. 25, Sec. 4

Counsel:
D V Mahajan, M H Deshmukh

JUDGEMENT

Vrushali V. Joshi, J.- [1] This is an appeal challenging the judgment and order of the Additional Sessions Judge, Nagpur in Sessions Trial No.39/2018 (State Vs. Kamlesh Dube and Others) thereby questioning the legality of judgment and order of convicting both the appellants under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, and sentencing both of them for life imprisonment alongwith fine of Rs.5000/- in default to suffer 3 months imprisonment.

[2] The facts in short are as under:

On 19.09.2017, one Sumit Kamble died at about 1.46 p.m. It is alleged that appellant Kamlesh Dube and Shekhar Dube committed his murder. It is the prosecution case that both accused and the deceased were working as a driver on garbage vehicle at Kanak Resources Company. On the day of incident i.e. on 19.09.2017 at about 1.46 p.m. Sumit along with his friend Rahul and Yogiraj went to the Bhandewadi Dumping Yard by riding on the motorcycle of Sumit. At said place, the sister of informant Rahul and other women were picking the garbage. Kamlesh and Shekhar both accused also went there to unload the garbage by their garbage vehicle. Kamlesh was on driving seat whilst Shekhar was sitting beside him. Kamlesh has married with the sister of deceased Sumit. Kamlesh and sister of Sumit namely Tanu were having love affair, which was not liked by Sumit. Both of them ran away and performed marriage before 15 days. On their return, sister of Sumit was staying with Kamlesh. Because of said marriage, there was dispute between Kamlesh and Sumit. They used to quarrel with each other. On the date of occurrence, when Sumit saw Kamlesh, he went to him and there was hot exchange of words between them. At that time, Shekhar alighted from truck and assaulted Sumit with knife on his back, stomach and other parts of the body. Sumit started running, however, Kamlesh also got down from the vehicle and assaulted Sumit by means of knife. Due to said assault, Sumit fell down, on which, Kamlesh went to his vehicle and drove the vehicle on the person of Sumit. The police were called by the informant and others. Informant Rahul Deshmukh set the criminal law into motion by lodging report against the accused, pursuant to which, the offence vide Crime No.354/2017 came to be registered and investigation commenced.

[3] Police visited the spot of incident and carried Spot Panchanama. At the time of drawing Spot Panchanama, the dead body was lying on the spot, which was latter sent for the postmortem. The Inquest Panchanama was drawn followed by the postmortem. Statement of witnesses were recorded and after completion of the investigation,

charge-sheet has been filed before the Judicial Magistrate First Class, Court No.1, Nagpur. The case was committed to the Court of Sessions. The charge was framed against the accused for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, Sections 4 read with Section 25 of the Arms Act, and Section 135 of the Maharashtra Police Act. The accused have denied the guilt.

[4] The prosecution has examined total 10 witnesses to prove the guilt of the accused.

[5] The prosecution case is based on direct evidence. Three eye witnesses have stated that both the accused stabbed the deceased and caused him to fell down. Then accused Kamlesh drove the vehicle on the person of the deceased. According to appellants, though the prosecution case is about driving the vehicle on the person of the deceased, however, there are no crush injuries on the person of deceased. It is, therefore, necessary to consider the evidence of doctor, who has conducted the postmortem.

[6] PW-9 Dr. Rajesh has stated that there were as many as 8 stab wound on the person of deceased. Apart from that there were contusions, abrasions, lacerated and incised wounds. The doctor has opined that the maxillary bone and mandible on both sides were fractured and all the injuries were ante-mortem. Similarly, internal injuries were also noticed which were under scalp haemotoma. There was displaced fracture of skull bone. On examination of brain, meninges was found torn corresponding to skull fracture and the brain was crushed into multiple pieces. Pleura was torn corresponding to rib fractures. 1000 cc of blood and blood clots were present in both sides of pleural cavity. On examination of lungs, stab wound was found, which corresponds to Injury No.2 of Col. No.17. Multiple lacerations were found over upper and middle lobe of right lung. There was stab wound over lower lobe of left lung corresponding to Injury No.3 mentioned in Col. No.17. He also found injury on abdominal wall and peritoneum was found torn. Abdominal cavity was containing blood about 15 ml. and blood clots. On examination of liver, he found multiple vertical lacerated wounds parenchymal deep present over anterior surface of both lobes of liver. Stab wound was present over the posterior aspect of left kidney, corresponding to Injury No.5 of Col. No.17. All the injuries were ante-mortem in nature. He categorically opined that the cause of death is shock and heamorrhage following multiple injuries sustained to deceased and the injuries mentioned in the P.M. Report are sufficient in the ordinary course of nature to cause death.

[7] The accused has come with the defence that because of consumption of alcohol by deceased, it caused dilation and congestion of blood vessels, which caused prolonged bleeding from injuries resulting into death. The defence of the accused is not probable, as there are multiple stab injuries as well as crush injuries on the dead body. The Inquest Panchanama and Spot Panchanama show that the vehicle was run over the head of the deceased, causing crush injury at head. The brain came out from his nose as per Spot Panchanama. We may clarify that while carrying Spot

Panchanama, dead body was very much lying on the spot, hence, it also bears description of dead body. The Inquest Panchanama also shows that the face and head was crushed. As per the Spot Panchanama, the wheel mark appears near the waist of deceased. Considering both panchanamas, medical evidence and postmortem report, it is evident that the deceased died homicidal death. The learned Trial Judge has rightly considered the said aspect. Moreover, the postmortem report is admitted by the accused, therefore, the homicide death is not in serious dispute.

[8] The learned Counsel for the appellants has argued that though the stab injuries were present and the prosecution is coming with the case of stabbing, however, both the accused have been acquitted for the offence under Arms Act. It is argued that the charge is defective as allegation is only about crush by vehicle. The said submission is devoid of merits as there exists crush injuries on the dead body. It may be irregularity that particulars about stabbing are not given in charge but accused has not shown any prejudice on said aspect. It is argued that though the prosecution case is about running the vehicle on the person of the deceased, however there are no crush injuries. The said submission would not sustain as the crush injuries are evident from the evidence of Medical Officer coupled with postmortem notes. It is argued that there is no recovery of weapons from the accused.

[9] He has further argued that though there are three eye witnesses, the evidence of eye witness PW-5 Yogiraj is not consistent with the evidence of other two eye witnesses about causing injury by Kamlesh and Shekhar. The third eye witness PW-6 Rita has stated that Kamlesh and Sumit were assaulting each other, which is not narrated by the other two eye witnesses. According to defence, the postmortem report does not discloses crush injury. It is argued that this is not a case of murder as the incident was at the spur of moment and with provocation by deceased Sumit. The appellants have placed reliance on the judgment of this Court in the case of **Sachin Laxman Dandekar Vs. State of Maharashtra (Criminal Appeal No.1032/2015),** wherein it is held as under:

> "The discussion and findings alluded to hereinabove, in our considered opinion pertaining to act of the Appellants does not travel beyond the offence of culpable homicide not amounting to murder in the facts and circumstances of the present case. Act of Appellants due to the motive proved by the prosecution was an act committed in the heat of passion and on the sudden spur of moment whereby the singular blow of hammer was inflicted by Appellant No.1 on Sakharam's forehead. The Trial Court has therefore certainly erred in convicting and sentencing the Appellants for offence punishable under Section 302 IPC when the Appellants deserve to be given the benefit of doubt."

So also, defence has placed reliance on the judgment of L/Nk Gursewak Singh Vs. Union of India & Anr.,2023 LiveLaw(SC) 571, wherein the Hon'ble Apex Court has observed as under:

> "There was a fight between him and the deceased over the issue of seniority. In fact, when the appellant told the deceased to bring water for him, the deceased refused to do so on the ground that he was senior to the appellant. In a disciplined force like Army, the seniority has all the importance. Therefore, there is every possibility that the dispute over seniority resulted in the appellant doing the act in a heat of passion. It appears that in the heat of passion, the appellant snatched a rifle held by the deceased and fired only one bullet. If there was any premeditation on the part of the appellant or if he had any intention to kill the deceased, he would have fired more bullets at the deceased. Hence, there was no intention on his part to kill the deceased."

These decisions would not assist defence as the conclusions are based on the facts as respective cases.

It is argued that the eye witnesses have not stated as to who has assaulted, at what part and how many injuries were on the person of the deceased. Alternatively, the appellants have stated that the case comes under Exception 4 to Section 300 of the Indian Penal Code.

[10] Further it is argued that there is no seizure of vehicle. The vehicle was not noted in the spot punchanama. The deceased was aggressor and not the accused, therefore, it comes under the Exception 4 to Section 300 of the Indian Penal Code. It is argued that the appellants can not be held guilty of an offence under Section 302 of the Indian Penal Code, but the act of the appellants fall under the purview of Section 304 Part - I of the Indian Penal Code. The learned Counsel for the appellants has also argued that the crime is committed in self defence and relied on the judgment of Ex. CT. Mahadev Vs. The Director General, Boarder Security Force & Ors.,2022 LiveLaw(SC) 551. He, therefore, submitted that the appeal may be allowed by setting aside the impugned judgment and order and in the alternative the conviction of the appellants be reduced into lesser offence punishable under Section 304 of the Indian Penal Code.

[11] The learned A.P.P. resisted the appeal by stating that the crush injuries were found on the dead body as per spot punchanama. As per Inquest Panchanama, the head was totally crushed. PW-2 Rahul has stated that they went to Dumping Yard for casual round. He would submit that the accused took private defence, but as the deceased was unarmed the same is not acceptable. The incident did not occurred at a spur of moment. Even after deceased fell down, the vehicle was taken on his person. Though the eye witness PW-5 Yogiraj has initially stated that Kamlesh caught hold deceased and Shekhar assaulted, the prosecution has declared him hostile. During cross-examination, PW-5 Yogiraj admitted the things as per his police statement. Recovery of weapon is at the hands of accused. There was blood on clothes of deceased. The evidence of doctor PW-9 shows that there were multiple fractures to skull and brain was crushed, which proves that the vehicle was run over on the person of the deceased. It is argued that the common intention can be easily inferred from the proved facts.

The Trial Court has rightly convicted both the accused. This is not a case, which comes under Exception 4 to Section 300 of the Indian Penal Code. Hence, prayed for dismissal of the appeal.

[12] We have carefully considered the rival submissions and gone through entire material. It is a case of direct evidence. There are three eye witnesses to the occurrence. PW-2 - Rahul, PW-5 - Yogiraj and PW-6 - Rita are the eye witnesses. The incident took place in the broad day light, at the dumping yard. PW-2 - Rahul is the first informant, who went to the dumping yard with the deceased Sumit and Yogiraj. It is his evidence that accused Kamlesh was unloading the garbage from his vehicle. Deceased Sumit went towards Kamlesh and they talked with each other. Accused Shekhar alighted from the vehicle to assault Sumit, who was holding knife. Accused Shekhar assaulted Sumit by means of knife at his waist, stomach and hand. Sumit started running. Kamlesh also alighted from the vehicle and assaulted Sumit by knife. Due to assault, Sumit fell on the ground. Thereafter, accused Kamlesh started his vehicle and run over the same on the person of Sumit by taking back and forth. Thereafter, both accused ran away from the place of occurrence.

[13] PW-5-Yogiraj has also deposed on the same line. He was with the deceased and PW-2 Rahul. They went to dumping yard. The accused has brought on record certain inconsistencies in the evidence of both the eye witnesses. As PW-5 Yogiraj has stated that there was hot exchange of words between Sumit and Kamlesh, Shekhar alighted from the vehicle from left side and assaulted Sumit by knife. Sumit started running and Kamlesh chased him after alighting from the vehicle and caught hold him. Shekhar again assaulted Sumit by means of knife. Thereafter, Shekhar boarded the truck and put his truck on the person of Sumit by taking it back and forth. There is inconsistency in the evidence of PW-5 Yogiraj and PW-2 Rahul, he has stated the role played by Shekhar as of Kamlesh. Learned A.P.P. has declared him hostile and cross-examined the witness. During the cross-examination, PW-5 deposed as per his statement, which corroborates with the evidence of PW-2 Rahul.

[14] PW-6 Rita is the another eye witness to the occurrence. It is her evidence that she was at the dumping yard and at about 2.00 p.m. accused Kamlesh came at the dumping yard by his vehicle accompanied by Shekhar. Kamlesh unloaded the garbage from his vehicle at the dumping yard. She was collecting scrap by the side of vehicle. Kamlesh took ahead his vehicle. She and Meena again started collecting scrap material. She saw that quarrel was going on between accused Kamlesh and Sumit. Therefore, she and Meena rushed to the spot. She saw that Kamlesh and Sumit were assaulting each other. Thereafter, accused Shekhar came with knife and assaulted Sumit by means of knife. Due to assault, Sumit started running. Kamlesh chased Sumit and took him near the vehicle. Shekhar caused Sumit to lay in front of the vehicle on which Kamlesh took the vehicle on the person of Sumit twice.

[15] Few discrepancies are noticed in the evidence of PW-6 Rita as she has stated that the scuffle was in between Sumit and Kamlesh. PW-6 is a rustic witness. All three

eye witnesses have stated as to how Kamlesh and Shekhar assaulted and put the vehicle on the person of the deceased. Though the statement of PW-6 is recorded on next day, the Investigating Officer has stated that during the investigation when they found that she is an eye witness, police called her at Police Station. No common man would come at his own to the Police Station to give the statement so as to avoid further enquiries and troublesome procedure. Therefore, though the statement of PW-6 Rita is recorded on the next day, the explanation given by the Investigating Officer is satisfactory. The evidence of these witnesses are consistent with each other. There were stab injuries and two knives were recovered from the accused. The knives and the clothes of the accused were stained with blood, which were seized at the instance of both the accused.

[16] Thus, prosecution case is mainly based on three eye witnesses, PW-2, PW-5 and PW-6 along with other corroboratory circumstances as narrated above. On appreciation of evidence of three eye witnesses it clearly indicates that on 19.09.2017 at 1.46 p.m. both the accused assaulted the deceased with knife and accused No.1 put the vehicle on his person. Medical evidence on record reveals that Sumit died due to multiple stab and crush injuries. In the circumstance, it can be safely held that both accused have caused death of Sumit.

[17] The alternate submission of the accused is that due to sudden provocation, the incident occurred. Two knives were recovered at the instance of both the accused. The deceased was without weapon. No doubt, the deceased was disturbed because the accused No.1 has performed marriage with his sister on which, there was dispute between both of them. Earlier incident of beating and dispute of deceased with accused No.1 is brought on record. The accused persons were carrying weapons and both of them not only assaulted the deceased, but drove the vehicle and crushed his head. The medical evidence on record reveals that the head was crushed. The Spot Panchanama proves that there were tyre marks near the waist. The evidence on record shows that the appellants acted in a cruel and unusual manner while committing murder. It is not the case of grave and sudden provocation to the appellant. As both the accused were having knives, they were determined to commit the murder of the deceased because of earlier quarrel. All above circumstances clearly indicates that the act of accused was well calculated. Deadly weapons have been used to cause multiple injuries over vital parts of body.

[18] To bring the case within the Exception 1 of Section 300 of the Indian Penal Code, the ingredients mentioned therein must be found for its application to the facts of the case in hand. To invoke Exception 1 of Section 300 of the Indian Penal Code, following requirements must be satisfied viz. (i) Whilst deprived of the power of self-control by grave and sudden provocation; (ii) causes the death of person who gave the provocation or (iii) causes the death of any other person by mistake or accident. The learned A.P.P. relied on the judgment of **State of Andhra Pradesh Vs. Rayavarapu Punnayya And Anr.**, 1976 4 SCC 382.

[19] It emerges from the evidence that both the accused were well prepared for committing murder as they carried dangerous weapons. During the talks, the accused No.2 alighted from the vehicle and assaulted with knife on the vital parts of the deceased. The accused No.1 came with another knife and he also assaulted. When deceased fell down, accused Kamlesh put the vehicle on his person.

[20] The very act of accused repeatedly inflicting knife blows on the vital part of the body itself indicates that they intended to cause that particular injury which were sufficient in the ordinary course of nature to cause death. The facts does not discloses that the accused have been provoked or by loss of temper and self control, the act was committed. Notably after inflicting severe blows deceased was not left, but his body was crushed by running over the vehicle. The said brutal act itself indicates that the act was done with determined intention to kill. These facts clearly constitutes the offence of murder as defined under Section 300 of the Indian Penal Code. The defence submission about applicability of Exception 1 is totally unacceptable.

[21] In the backdrop of the findings recorded above, we are of the considered view that the prosecution has duly proved that both accused in furtherance of the common intention have committed the offence of murder of deceased Sumit punishable under Section 302 read with Section 34 of the Indian Penal Code. We find no case of interference, hence, appeal being devoid of merit, stands dismissed.

[22] The Criminal Appeal is dismissed accordingly
