IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO.200011 OF 2017

(397(Cr.PC)/438(BNSS))

BETWEEN:

THE STATE OF KARNATAKA,
THROUGH DEVAR HIPPARAGI POLICE STATION,
VIJAYAPURA, REPRESENTED BY THE,
ADDITITONAL STATE PUBLIC PROSECUTOR,
KALABURAGI.

...PETITIONER

(BY SMT. MAYA T.R., HCGP)

AND:

HANAMANT S/O SHANKARAPPA HARIJAN,
AGE:33 YEARS, OCC: AGRICULTURE,
R/O. UTNAL, TQ. BASAVAN BAGEWADI.

...RESPONDENT

(BY SRI SUDARSHAN M AND
SRI PRASANNA KUMAR M.Y., ADVOCATES)

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.P.C PRAYING TO, ALLOW THE CRIMINAL REVISION PETITION BY SETTING ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED:16.08.2016 PASSED BY THE LEARNED PRINCIPAL SESSIONS JUDGE, VIJAYAPUR IN CRIMINAL APPEAL NO.25/2015. AND RESTORE THE JUDGMENT PASSED BY THE JMFC COURT, SINDAGI, IN C.C.NO.143/2013 AND CONSEQUENTLY CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 498-A OF IPC.

THIS PETITION COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

This revision petition under Section 397 read with 401 of Cr.P.C. is filed assailing the judgment and order of acquittal passed by the Court of Principal Sessions Judge, Vijayapur (for short 'Appellate Court) in Criminal Appeal No.25/2015 dated 16.08.2016.

2. Heard the learned counsel for the parties.

3. Respondent herein was charge sheeted for the offences punishable under Section 498A, 504, 323, 354, 506 read with Section 34 of the Indian Penal Code, 1980 (for short 'IPC') along with two others. Accused Nos.1 to 3 were tried for the charge sheeted offences before the jurisdictional Court of Magistrate in C.C.No.143/2013. In the said case, the learned Magistrate by judgment and order dated 3.05.2015 convicted accused No.1 for the

offence punishable under Section 498A of IPC while acquitting him for other charge sheeted offences. Learned Magistrate had acquitted accused Nos.2 and 3 for all the offences for which they were charge sheeted.

4. Being aggrieved by the judgment of conviction and order of sentence passed by the learned Magistrate convicting accused No.1 for the offence punishable under Section 498A of IPC and sentencing him to undergo simple imprisonment for a period of six months and pay fine of Rs.10,000/- and in default, to undergo simple imprisonment for a period of one month, accused No.1 had filed Criminal Appeal No.25/2015 before the Court of Principal Sessions Judge, Vijayapur, which was allowed by the Appellate Court vide impugned Judgment and order dated 16.08.2016. Assailing the same, the State is before this Court in this revision petition.

5. Learned High Court Government Pleader appearing for the State submits that the Appellate Court has erred in extending the benefit of acquittal as against

accused No.1 only for the reason that accused Nos.2 and 3 were acquitted by the Trial Court. She submits that evidence of PW.1, PW.2 and PW.5 has not been properly appreciated by the Appellate Court, which has resulted in passing of the impugned judgment and order of acquittal. Accordingly, she prays to allow the revision petition.

6. Learned counsel appearing for the respondent submits that Appellate Court has rightly acquitted accused No.1 since the allegations made by all the witnesses against accused Nos.1, 2 and 3 are similar. He submits that there are no specific allegations as against accused No.1 and therefore, the Appellate Court was justified in acquitting accused No.1. Accordingly, he prays to dismiss the revision petition.

7. Prosecution to substantiate the allegations made against accused persons had examined ten witnesses as PW.1 to PW.10 before the Trial Court and had got marked five documents as Exs.P1 to P5. On behalf of

the defence, no documents were marked nor was any defence evidence led.

8. PW.1, PW.2 and PW.5 are the witnesses, who have made allegations as against accused persons. Ex.P1 is the copy of the first information submitted by PW.1. In Ex.P1, it is stated that PW.1 was ill-treated in her matrimonial house for the reason that she did not know cooking and she was black in colour. It is also alleged that she was ill-treated in her matrimonial house for giving birth to two girl babies. However, during the course of deposition, PW.1 has not made any allegation against accused persons that she was being ill-treated in the matrimonial house for the reason that she had given birth to two girl babies. On the other hand, perusal of the deposition of PW.1 would go to show that she has made omnibus allegations against all the accused persons and specific overt-act, which would attract the alleged offence under Section 498A of IPC as against accused No.1 is not made by her. Even PW.2 and PW.5 have not made any

specific allegation as against accused No.1, which would attract the offence punishable under Section 498A of IPC. Allegations made by PW.1, PW.2 and PW.5 as against all the accused persons are omnibus in nature.

9. Considering the aforesaid aspects of the matter, the learned Magistrate had acquitted accused Nos.2 and 3 but had convicted accused No.1 for the offence punishable under Section 498A of IPC, while he was acquitted for the other charge sheeted offences. Undisputedly, the judgment and order of acquittal of accused Nos.2 and 3 has not been questioned by the State or by the de-facto complainant/PW1. The said judgment and order of acquittal passed in favour of accused Nos.2 and 3 has attained finality.

10. The Appellate Court having appreciated this aspect of the matter has held that the Trial Court was not justified in convicting accused No.1 while acquitting accused Nos.2 and 3 since the allegations made by the witnesses i.e., PW.1, PW.2 and PW.5 as against the

accused persons were common and no specific allegations are made against accused No.1, which would attract the alleged offence punishable under Section 498A of IPC. In addition to the same, it is also noticed that independent witnesses examined on behalf of the prosecution have not supported the case of the prosecution and they were treated as hostile witnesses. Nothing material has been elicited from the mouth of these hostile witnesses even though they were cross-examined by the Public Prosecutor.

11. The Appellate Court also has noticed that there is an allegation made against accused No.1 that he had married another lady after PW.1 was sent out of the matrimonial house. Therefore, it appears that PW.1 had taken shelter in her parents house and she had approached the police only after accused No.1 had allegedly contracted another marriage. Therefore, it is apparent that there is a delay in approaching the police and no explanation whatsoever has been offered by the

first informant for the same. The Appellate Court having taken into consideration all these aspects of the matter, has acquitted accused No.1, whereas, the Trial Court has convicted accused No.1 for the offence punishable under Section 498A of IPC though perusal of the depositions of the witnesses will go to show that common allegations are made against all the accused persons.

12. Under the circumstances, I am of the considered opinion that the Appellate Court was fully justified in setting aside the judgment of conviction and order of sentence passed by the Trial Court in C.C.No.143/2013 dated 30.05.2015 and acquitting accused No.1 for the offence punishable under Section 498A of IPC. Therefore, I do not find any good ground to entertain this revision position. Accordingly, the same is dismissed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SRT
List No.: 1 Sl No.: 58
CT:PK