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**(2016) 02 BOM CK 0206**

**In the Bombay High Court**

**Case No :** Criminal Application (Apl) No. 497 of 2015

Jaiprakash Madhukarrao Sahurkar

APPELLANT

Vs

Sarika w/o Jaiprakash Sahurkar

RESPONDENT

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**Date of Decision :** 29-02-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 300, Section 482  
Penal Code, 1860 (IPC) — Section 498A  
Protection of Women From Domestic Violence Act, 2005 — Section 12, Section 17,  
Section 19, Section 20, Section 3

**Citation :** (2016) ALLMRCri 5008 : (2017) 1 MhLJCrI 401

**Hon'ble Judges :** Z.A. Haq, J.

**Bench :** Single Bench

**Advocate :** Shri Kamlesh Dodani, Advocate, for the Non-Applicant; Shri A.L. Deshpande, Advocate, for the Applicant

**Final Decision :** Dismissed

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## **Judgement**

Z.A. Haq, J.(Oral) - Heard Shri A.L. Deshpande, Advocate for the applicant (husband) and Shri Kamlesh Dodani, Advocate for the non-applicant (wife).

2. The applicant has filed this application under Section 482 of the Code of Criminal Procedure and under Article 227 of the Constitution of India praying that the order passed by the learned Magistrate in Misc. Criminal Application No.153/2014 on the application (Exhibit No.35) on 18-05-2015 be set aside and the proceedings initiated by the non-applicant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Domestic Violence Act, 2005") be quashed.

3. The marriage of the applicant and non-applicant was solemnized on 21-02-1999. The applicant and non-applicant are having two sons, elder studying in 10th standard and younger in 7th standard. The differences between the parties arose in 2013 and the non-applicant had filed the complaint against the applicant with the Police Station on 02-12-2013 on the basis of which first

information report was registered against the applicant for offences under Sections 498-A, 323 and 504 of the Indian Penal Code. The non-applicant filed complaint under Section 12 of the Domestic Violence Act, 2005 before the learned Magistrate, on 16-01-2014.

In the proceedings before the learned Magistrate, an attempt was made for amicable settlement and the parties arrived at amicable settlement on 26-03-2014 and the terms were reduced to writing.

In October 2014 the applicant filed H.M.P. No.347/2014 praying for decree for divorce under Section 13(1)(i-a) of the Hindu Marriage Act. The applicant had filed an application before the trial Court praying that the agreement (Tadjod Patrak) between the parties executed on 26-03-2014 be cancelled. This application was rejected by the trial Court.

4. The learned Magistrate conducted the trial initiated against the applicant for offences punishable under Sections 498-A, 323 and 504 of the Indian Penal Code and by the judgment dated 15-04-2015 acquitted the applicant. After the judgment is passed by the learned Magistrate acquitting the applicant, an application (Exhibit No.35) came to be filed by the applicant on 27-04-2015 in the proceedings under the Domestic Violence Act, 2005 praying that the proceedings be dismissed in view of the findings recorded by the learned Magistrate while acquitting the applicant. The learned trial Judge dismissed this application by the order dated 18-05-2015.

5. The substantive challenge is that the applicant having been acquitted of the charge under Sections 498-A and 323 of the Indian Penal Code, the proceedings initiated by the non-applicant under the provisions of the Domestic Violence Act, 2005 on the same allegations made by the non-applicant, are required to be dismissed. This challenge is raised relying on the provisions of Section 300 of the Code of Criminal Procedure.

Shri A.L. Deshpande, Advocate, referring to Section 28 of the Domestic Violence Act, 2005 and Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006, has submitted that the proceedings under Section 12 of the Domestic Violence Act, 2005 are governed by the provisions of the Code of Criminal Procedure, 1973 and the applications under Section 12 of the Domestic Violence Act, 2005 have to be dealt with in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973. It is submitted that there cannot be dispute about applicability of Section 300 of the Code of Criminal Procedure and the entitlement of the applicant for its benefit. The learned Advocate has submitted that the applicant having been tried by the Court of competent jurisdiction for the offences under Sections 498-A and 323 of the Indian Penal Code on the basis of allegations made by the non-applicant in her complaint and the applicant having been acquitted, the applicant cannot be compelled to undergo the rigour of trial under 12 of the Domestic Violence Act, 2005 on the basis of the same allegations.

It is submitted that claiming benefit under the provisions of Domestic Violence Act, 2005, the non-applicant has to establish that there is "domestic violence" as defined in Section 3 of the Domestic Violence Act, 2005, and the ingredients of "domestic violence" as per Section 3 of the Domestic Violence Act, 2005 are almost the same as that of Section 498-A of the Indian Penal Code and once it is found by the Court of competent jurisdiction that the non-applicant has failed to establish that the applicant had subjected the non-applicant to cruelty contemplated by Section 498-A of the Indian Penal Code, the applicant cannot be put to double jeopardy of undergoing the trial under the provisions of Section 12 of the Domestic Violence Act, 2005. In support of the submission reliance is placed on the following judgments :

- i) Judgment given by the Andhra Pradesh High Court in the case of Markapuram Siva Rao s/o Somaiah v. State of Andhra Pradesh and another in Criminal Petition No.12970 of 2010.
- ii) Judgment given by this Court in the case of G.G.A. Naidu v. State of Maharashtra & Ors. reported in 2002 ALL MR (Cri.) 1465.
- iii) Judgment given by the Madras High Court in the case of Emperor v. John McIver reported in AIR 1936 Madras 353 (Full Bench).
- iv) Judgment given by the Andhra Pradesh High Court in the case of Thadi Narayana v. The State of Andhra Pradesh reported in AIR 1960 AP 1 (Full Bench).

6. Shri A.L. Deshpande, Advocate has submitted that the findings recorded by the learned Magistrate while acquitting the applicant of the charge under Section 498-A and Section 323 of the Indian Penal Code are binding on the non-applicant. It is submitted that the maxim "res-judicata provertitate accipitur" is applicable to the criminal proceedings also. In support of this submission, reliance is placed on the judgment given by the Hon'ble Supreme Court in the case of Pritam Singh and another v. The State of Punjab reported in AIR 1956 SC 415.

7. The learned Advocate for the applicant has submitted that the non-applicant has abused the process of law by initiating different proceedings against the applicant on the basis of same allegations and the applicant having been acquitted in the proceedings initiated on the allegations of commission of offences under Section 498-A and Section 323 of the Indian Penal Code, the non-applicant cannot be permitted to harass the applicant by requiring the applicant to face the proceedings under Section 12 of the Domestic Violence Act, 2005 on the basis of same allegations. To support this submission, the learned Advocate has relied on the judgment given by the Punjab and Haryana High Court in the case of M.R. Tiwari v. M/s. Aster Drugs and Pharmaceuticals Ltd. and Ors. reported in 2009(3) Crimes 401 (P&H).

It is prayed that the application be allowed, the impugned order be set aside and the proceedings filed by the non-applicant under Section 12 of the Domestic

Violence Act, 2005 be dismissed.

8. Shri Kalmesh Dodani, Advocate for the non-applicant has submitted that the challenge raised by the applicant relying on the provisions of Section 300 of the Code of Criminal Procedure is misdirected. It is submitted that the ingredients of offence punishable under Section 498-A of the Indian Penal Code are different from the ingredients of "domestic violence" defined by Section 3 of the Domestic Violence Act, 2005. It is submitted that the standard of proof required for convicting the accused for the offences punishable under Section 498-A and Section 323 of the Indian Penal Code is different than the standard of proof required while considering grant of reliefs to the aggrieved person under Section 12 of the Domestic Violence Act, 2005. The learned Advocate has pointed out the conclusions of the learned Magistrate in paragraph No.31 of the Judgment given in Regular Criminal Case No.129/2014 and has submitted that the applicant is acquitted of the charge for commission of offence under Section 498-A and Section 323 of the Indian Penal Code because of insufficiency of evidence. The learned Advocate for the non-applicant has submitted that the proceedings under Section 12 of the Domestic Violence Act, 2005 are quasi-criminal, quasi-civil proceedings. To support this submission, the learned Advocate has relied on the judgment given by this Court in the case of Raosaheb Pandharinath Kamble and Ors. v. Shaila Raosaheb Kamble and Ors. reported in 2010 ALL MR (Cri.) 2143. It is prayed that the application be dismissed with costs.

9. With the assistance of the learned Advocates for the respective parties, I have examined documents placed on the record of the application. In the application filed under Section 12 of the Domestic Violence Act, 2005, the non-applicant has prayed for relief under Section 17 of the Domestic Violence Act, 2005 regarding her right to reside in a shared household. The non-applicant has prayed for relief under Section 19 of the Domestic Violence Act, 2005 for separate accommodation or for directions to the applicant to pay Rs. 5,000/- per month to enable the non-applicant to avail separate accommodation. The non-applicant has sought monetary reliefs under Section 20 of the Domestic Violence Act, 2005 and has prayed that the applicant be directed to pay Rs. 20,000/- per month for food, clothes, medical, travelling and miscellaneous items. The submissions made on behalf of the applicant are required to be considered in the background of the reliefs sought by the non-applicant in the application under Section 12 of the Domestic Violence Act, 2005.

10. Section 498-A of the Indian Penal Code reads as follows :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this Section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to

commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

The considerations in the prosecution under Section 498-A of the Indian Penal Code are different from the considerations while dealing with an application under Section 12 of the Domestic Violence Act, 2005. "Cruelty" as explained/contemplated by Section 498-A of the Indian Penal Code is different from the "domestic violence" as defined by Section 3 of the Domestic Violence Act, 2005.

"Economic abuse" as defined by clause (iv) of Explanation I of Section 3 of the Domestic Violence Act, 2005 cannot be an offence under Section 498-A of the Indian Penal Code. The denial of right of shared household or denial of alternate accommodation to the wife or denial of monetary assistance to the wife will not constitute an offence punishable under Section 498-A of the Indian Penal Code. Considering the facts of the case, in my view, the submissions made on behalf of the applicant relying on the provisions of Section 300 of the Code of Criminal Procedure, are misdirected. Apart from the fact that the applicant is acquitted of the charge of commission of offences punishable under Section 498-A and Section 323 of the Indian Penal Code because of insufficiency of evidence, in my view, the claim made by the applicant under Sections 17, 19 and 20 of the Domestic Violence Act, 2005 is not hit by the principles of res judicata and by the findings in the judgment given in Regular Criminal Case No.129/2014.

11. There cannot be any dispute that the principles of res judicata are applicable to criminal proceedings and the maxim "res judicata pro veritate accipitur" will apply to the proceedings under Section 12 of the Domestic Violence Act, 2005 as the proceedings are quasi-civil quasi-criminal in nature. However, the point which is required to be considered is whether the non-applicant can seek reliefs under Section 17, Section 19 and Section 20 of the Domestic Violence Act, 2005 on the basis of the same allegations, for which the applicant was prosecuted under Section 498-A and Section 323 of the Indian Penal Code.

Though, in the application under Section 12 of the Domestic Violence Act, 2005, the non-applicant has reproduced the same allegations against the applicant which were made in the complaint made to the police station on the basis of which the applicant is prosecuted for offences under Section 498-A and Section 323 of the Indian Penal Code, the pleadings/averments for seeking reliefs under Section 17, Section 19 and Section 20 of the Domestic Violence Act, 2005 are different. The relevant pleadings in support of the reliefs claimed by the non-applicant are in paragraph No.60 of the application, as follows :

"60. That the applicant is not having any source of income and she is not doing any job and her children are also dependent on her. It is to submit that the

respondent is lecturer earning good salary but not sparing single paisa for the applicant and the children. That the respondent is leading his luxurious life and depriving the applicant and her children from minimum requirements of the life. It is to submit that the respondent No.1 can easily pay Rs. 20,000/- to the applicant for the maintenance of the applicant and her children. It is therefore prayed that Hon'ble Court may grant Rs. 20,000/- as maintenance to the applicant."

12. The entitlement of the non-applicant for the reliefs sought by her and the liability of the applicant to provide shared household or to make an alternate arrangement for residence of the non-applicant and to provide monetary assistance for food, clothes, medical, travelling and miscellaneous items will have to be adjudicated by the Court considering the application under Section 12 of the Domestic Violence Act, 2005. Learned Magistrate who has decided the Regular Criminal Case No. 129/2014 could not have dealt with these issues.

13. In view of the above, the submissions made on behalf of the applicant cannot be accepted. The provisions of Section 300 of the Code of Criminal Procedure will not be attracted in the facts of the case. The learned Magistrate has rightly considered the issue and there is no error in the impugned order repelling the challenge raised on behalf of the applicant.

In view of my conclusions, the judgments relied upon by the learned Advocates representing the respective parties are not required to be discussed in details.

14. I see no reason to interfere with the impugned order. The application is dismissed. In the circumstances, the parties to bear their own costs.