

ORDER BELOW EXH. 49 IN R.C.C. NO. 201/2020

(State Vs. Shankar Ramchandra Bodke & Ors.)

1. This is an application filed under section 239 of the Code of Criminal Procedure, 1973 on behalf of accused nos. 1 to 7 (for brevity hereinafter referred to as 'accused persons') seeking discharge from the present case registered for the offences punishable under section 498-A, 323, 504 & 506 r/w 34 of the Indian Penal Code, 1860.
2. Learned advocate for the accused persons has submitted that there is no sufficient evidence to frame charge against the accused persons. Because, the informant namely Mahadevi Shankar Bodke was and is never a legally wedded wife of accused No.1 namely Shankar Ramchandra Bodke. It is further submitted that the informant was married to one Jaysing Bhagwan Roman, R/o. Bembale, Tal. Madha, Dist. Solapur on 01/01/2018, and they are not judicially separated nor any divorce has been taken place between them. Therefore, marital relations between them are still subsist.
3. It is further submitted that informant married to the accused No.1 during the life-time of his first wife namely Chhaya Jaysing Roman. Therefore, the first wife of the accused No.1 has filed a criminal complaint against the accused No.1 and his parents and relatives bearing Criminal Case No.55/2008 for the offence punishable under sections 498(A), 323, 504 & 506 r/w 34 of the IPC in the Court of Malshiras. The accused are relying on the certified copy of Exh.1 of the said complaint. It is further

submitted that since the informant is not a legally wedded wife of accused No.1 and their marriage is not performed as per Hindu Rites and Customs. Therefore, section 498(A) of the IPC does not get attracted against the accused persons. The accused persons have relied upon the following judgments -

- a) *P. Sivakumar & Ors. Vs. State [MANU/SCR/32570/2023].*
- b) *Shivcharan Lal Verma & Anr. Vs. State of Madhya Pradesh [MANU/SC/0466/2002].*

Thus, in view of the above judgments the accused persons are seeking discharge from the present proceedings.

4. On the other hand, the present application came to be strongly resisted by the prosecution by filing separate Say below Exh.53. Wherein, it is contended that the present application and its contents are false. The application is not maintainable it has been filed to prolong the proceeding.

5. It is further contended that in the report the informant has mentioned that earlier in view of compromise between the accused persons and the informant earlier criminal case filed under section 498(A) of the IPC was withdrawn. In that matter, accused persons had admitted relations with the informant being the wife of accused No.1. It is further contended that even the photographs of the marriage of accused No.1 and informant are filed with the charge-sheet. Therefore, it is further contended that there is no substance in the application and there is material to show that the informant is a legally wedded wife of accused No.1. Hence, prayed to reject the application.

6. Heard both sides. Perused the application, say and I have gone through the charge-sheet and documents annexed therewith. So also, I have perused the relevant provision of the Code.

7. The record shows that in the present matter charge-sheet came to be filed before the Court on 08/09/2020. It further appears that on 08/09/2020 itself charge was framed against the accused persons by Court below Exh.21 for the offence punishable under sections 498(A), 323, 504 & 506 r/w 34 of the IPC. Thereafter, on 05/10/2023 i.e. near about 3 years after framing of the charge the present application came to be filed by the accused persons for seeking discharge.

8. Now the question arise before this Court as to whether the discharge can be sought by the accused persons after the framing of charge? In order to ascertain the same it is required to have look on the relevant provisions of the Code. The present case has been registered as a Regular Criminal Case. Therefore, the provisions of Chapter 19 of the Code are applicable to the case on hand. Section 239 of the Cr.PC deals with discharge. It reads as under :

“upon considering the police report and documents sent with it and after examination of any accused the Magistrate thinks fit and after given an opportunity to the prosecution and accused of being hear the Magistrate considering that charge against the accused to be groundless then he shall discharge the accused and also record the reasons for doing so.”

9. Thereafter, section 240 of the Code provides framing of

charge. It reads as under :

“If upon consideration, examination, if any, and hearing, the Magistrate of the opinion that there is a ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punishable by him, he shall frame charge in writing against the accused. Thereafter, charge shall be read and explain to the accused and he shall be asked whether he pleads guilty of the offence charge or claims to be tried”.

10. After the perusal of the above provisions it become crystal clear that the accused can be discharged before framing of charge by the Court if the Court is of the opinion that the charge against the accused to be groundless upon considering the police report and documents sent with it under section 173 of the Cr.PC. However, if the Court considers that there is ground for presuming that the accused has committed an offence triable by that Court then Court shall frame charge against the accused in writing.

11. Now coming to the case in hand, as stated above in the present matter the charge was framed by the learned predecessor against the accused persons on 08/098/2020 below Exh.21. Therefore, the stage under section 239 has been crossed and learned predecessor after considering the material placed on the record in the charge-sheet was of the considered view that the accused have committed offences punishable under sections 498(A), 323, 504 & 506 r/w 34 of the IPC. Therefore, the learned predecessor was pleased to frame the charge against the accused persons. Therefore, now accused can be permitted to step back to the provision of

239 seeking discharge on the ground of validity of marriage between the accused No.1 and informant.

12. So far as judgments relied upon by the accused persons are concerned then, with all respects to them, I am of the considered view that they are not applicable to the case on hand. As such, they are distinguishable on facts. As such, in above mentioned both judgments, after full-fledged trial the Courts were of the opinion that the marriage between the informant and accused was not valid. Therefore, section 498(A) of the IPC was not attracted against the accused. On the other hand, in the present case the trial is yet to commence. Even, the informant has not been examined before the Court. Therefore, there is no substantial evidence on record to hold that the marriage between the accused No.1 & informant is void and therefore, accused persons are entitled for discharge.

13. It is pertinent to note that the informant in her report has asserted that even prior to lodging of present complaint she had filed the complaint under section 498(A) of the IPC against accused persons. So also, and she had instituted the other proceedings under sections 125 of the Code as well as under section 12 of the Domestic Violence Act against the accused persons, and all cases were compromised between the parties. Thereafter, the informant went with the accused No.1 for cohabitation. However, she was again harassed by the him and she was told that only for the purpose of settlement of the cases pending against the accused persons the informant was taken at the house of the accused persons.

14. Record further shows that some colour photographs of the marriage ceremony of informant and accused No.1 are filed along with charge-sheet it prima-facie shows that there was a marriage between the accused No.1 and informant as per Hindu rites and customs. Therefore, in my considered view, without going through evidence of the informant and other witnesses of the prosecution and defence it would not be safe to conclude that the informant is not a legally wedded wife of accused No.1. Therefore, charge against accused persons under section 498(A), 323,504 & 506 r/w 34 of the IPC is not attracted. Even otherwise, I have already held that the present application itself not maintainable after framing of the charge. Therefore, I am of the considered view that the application devoid of merit and liable to be rejected. Hence, I proceed to pass following order :

ORDER

1. Application Exh.49 is rejected.
2. No order as to costs.

Date: 10/02/2025.

(M.H. Farooqui)
Judicial Magistrate First Class,
Indapur, Dist. Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.

Name of Steno. :- Shri. Chalwade G.S. (Stenographer-3)

Court Name :- Shri. M.H. Farooqui,
Civil Judge (Jr. Dn.) and J.M.F.C.,
Indapur, Dist. Pune.

Date :- 10/02/2025

Order signed by the :- 10/02/2025
presiding officer on

Order uploaded on :- 11/02/2025