

SUPREME COURT OF INDIA

U.Suvetha

Vs.

State By Insp.of Police

CrI.A.No. 938 of 2009

(S.B. Sinha J.)

06.05.2009

JUDGEMENT

S.B. SINHA, J.

1. Leave granted.

2. Whether the term "relative of husband of a woman" within the meaning of Section 498A of the Indian Penal Code should be given an extended meaning is the question involved herein.

3. Respondent No.2 was married to one Tutus Gunaraj on 18th May, 2005. Allegedly, he had some connection with the appellant. On coming to know about the same the first informant asked her husband thereabout. She was allegedly ill treated. She was left by her husband to live with her mother-in-law at Cuddalore while he went to his place of work at Sivagangai.

4. Allegedly dowry demands were again made, the details whereof are not necessary to be noticed. However, we may notice that portion of the allegations made in the first information report, which is relevant for our purpose. It reads as under :- "Even though properly advised my husband he has not cut the illegal relationship with the said Swetha. If I talk about her, my husband beat me and tortured me. My mother-in-law also abetting him. If my husband received the salary, he gave the same with his aunt Thangam, then whenever required, at that time he get the money from her for his expenses. Even though my mother-in-law has known very well about the illegal intimacy of the husband with Swetha wantonly given married me with him. The address of the said lover Swetha is D/o. Venka Takrishnan, No.167, Majestic Colony Valasaravakkam, Alwarthirunagar, Chennai-50, for not paying the money and jewellery my husband of my mother-in-law compelled me to get divorce and tortured me. I am tolerating all these hardships. In the deepavali of the year 2006 my husband told me that he is going to his native and left me with my parents' house.

Hence my father send/issued a legal notice to my husband and my mother-in-law on 13.11.2006, then even though conciliation talks made, but the said conciliation failed on 12.1.07. My husband filed petition for divorce. Hence I request you to take immediate action on my complaint and get back my dress and my TV Scooty NoTN05 C 4971. My husband and my mother-in-law concealed the true facts and married me and spoiled my life. Hence, I also request you to take action against them and file a case against them and get punished them in accordance with law.

My husband and mother-in-law tortured and ill- treated me by demanding dowry. They have scolded me with untoward and intolerable words and beat me so many times and treated me very badly. Hence, I pray to take action in accordance with law against them and punish them. My husband's aunt Tmt. Thangam, her son-in-law Utha, and his concubine Swetha all are inducing my husband and my mother-in-law to ill treat me and tortured me. Hence I request you to take action against those persons and punish them in accordance in law after filing a case."

5. Inter alia on the premise that the allegation made against the appellant in the first information report, even if it be given face value, does not disclose an offence under Section 498A of the Indian Penal Code, an application for discharge was filed by her. The same was dismissed on 25 th March, 2008. A revision application filed thereagainst has been dismissed by the High Court by reason of the impugned judgment dated 1st August, 2008.

6. In the first information report except at one place the appellant has been described by the first informant as 'girl friend' of her husband and only at the end the word 'concubine' has been used.

The core question which arises for consideration is as to whether the 'girl friend' would be a 'relative of husband of a woman' in terms of Section 498A of the Indian Penal Code.

Section 498A of the Indian Penal Code reads as under:- "498A. 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 willful 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 meet such demand."

7. The aforementioned provision was inserted in the Indian Penal Code by reason of The Criminal Law (Second Amendment) Act, 1983 (Act No.45 of 1983). The statement of objects and reasons thereof reads as under :- "The increasing number of Dowry Deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of Dowry Death but also cases of cruelty to married woman by their in laws."

8. The High Court opined that the word 'paramour' and the 'concubine' stand on the same footing. In arriving at the said opinion, it agreed with the decision of a Division Bench of Andhra Pradesh High in Vungarala Yedukondalu v. State of Andhra Pradesh, [1988 CRI. L.j. 1538] and differed with the decision of the Bombay High Court, to opine :- "The term "relative" has not been defined in Indian Penal Code and in the absence of any such definition, we have to go by the precedents.

Assuming that the allegations made against the petitioner viz., that she is the concubine of A1 is true, then, it is to be held that there is a living relationship between the petitioner and A1 in the case and there are specific allegations to the fact that only at the instigation of the revision petitioner, A1 is harassing the second respondent and as such this Court is of the considered view that a charge under Section 498-A of IPC among other offence has also been rightly framed against the revision petitioner."

9. Ingredients of 498A of the Indian Penal Code are :- a). The woman must be married b) She must be subjected to cruelty or harassment;

and c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband."

10. Appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged. A woman in terms of the aforementioned provision must be subjected to cruelty by her husband and/or his relative. The word 'cruelty' has also been defined in the explanation appended thereto. It is in two parts. Clause (a) of the said explanation refers to a conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); clause (b) provides for 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.

It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

11. The word 'cruelty' having been defined in terms of the aforesaid explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498A of the Indian Penal Code.

An offence in terms of the said provision is committed by the persons specified therein. They have to be the 'husband' or his 'relative'. Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision.

If the appellant had not been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Indian Penal Code and appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498A of the Indian Penal Code.

12. In the absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word 'relative' would depend upon the nature of the statute. It

principally includes a person related by blood, marriage or adoption.

The word `relative' has been defined in P. Ramanatha Aiyar Advanced Law Lexicon - Volume 4, 3rd Edition as under :- "Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "REALTIVE" means a husband wife, ancestor, lineal descendant, brother or sister.
[Estate Duty Act].

"RELATIVE" means in relation to the deceased, a) the wife or husband of the deceased;

b) the father, mother, children, uncles and aunts of the deceased, and c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if, - a) they are the members of a Hindu undivided family, or b) they are husband and wife; or c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means - a) The mother, father, husband or wife of the individual, or b) a son, daughter, brother, sister, nephew or niece of the individual, or c) a grandson or grand-daughter of the individual, or d) the spouse of any person referred to in sub- clause (b) [Income tax Act].

"REALTIVE" means - 1) spouse of the person ;

2) brother or sister of the person ;

3) brother or sister of the spouse of the person;

4) any lineal ascendant or descendant of the person;

5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act]."

Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean :-
"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else;

not absolute or independent: Happiness is relative.

7. having relation or connection. 8. having reference : relevant; pertinent (usually fol. by to):

two facts relative to the case. 9. correspondent;

proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor."

13. Further more, the provision is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly.

This Court in T. Ashok Pai v. Commissioner of Income Tax, Bangalore, [2007 (8) SCALE 354] held as under :- "19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr. 1995 Supp (2) SCC 187]."

[See also *Noor Aga v. State of Punjab*, [2008 (9) SCALE 681].

14. A Three Judge Bench of this Court, however, in *Shivcharan Lal Verma and another v. State of M.P.*, [2002 (2) Crimes 177 SC = JT (2002) 2 SC 641] while interpreting Section 498A of the Indian Penal Code, in a case where the prosecution alleged that during the life of the first wife-Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-

"..One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC."

15. A Two Judge Bench of this Court, however, in *Reema Aggarwal v. Anupam*, [(2004) 3 SCC 199], while construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating :- "...If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages.

The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband"

to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions -- Sections 304-B/498- A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those

provisions."

16. It is not necessary to go into the controversy as to whether Reena Agarwal (supra) was correctly decided or not as we are not faced with such a situation here. We would assume that the term 'husband' would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty.

17. Herein, as noticed hereinbefore, relationship of the appellant with the husband of the first informant, is said to have been existing from before the marriage. Indisputably they lived separately. For all intent and purport the husband was also living at a separate place. The purported torture is said to have been inflicted by the husband upon the first informant either at her in-law's place or at her parents' place. There is no allegation that appellant had any role to play in that regard.

18. By no stretch of imagination a girl friend or even a concubine in an etymological sense would be a 'relative'. The word 'relative' brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

19. We may notice that the Andhra Pradesh High Court in Rajeti Laxmi v. State of Andhra Pradesh, [1 (2007) DMC 797], held as under :- "4. The entire reading of the charge-sheet and the statements of L.Ws. 1 to 7, goes to show that it is nobody's case of the accused or the prosecution that A-6 is the relative of husband of L.W. 1. She is only concubine of A-1 and having illicit intimacy with him. Therefore, in the absence of any averment in the charge-sheet or any statement that she is a relative of A1, I am of the opinion that the offence under Section 498A, IPC do not attract to A-6. Even as per the dictionary meaning "relative" means a person connected by blood or marriage or 'a species' related to another by common origin". Simply because A-6 is having illicit intimacy with A-1, it cannot be said that she is a relative of A-1. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C. No.233 of 2004 for the offence under Section 498-A, IPC, against the petitioner,A-6. Insofar as the other offences are concerned, it may go on."

A learned Single Judge of the Bombay High Court, Bench at Aurangabad, in Swapnaja v. State of Maharashtra and another, [Criminal Application No.388 of 2008 decided on 21.4.2008], opined :- "...Even assuming that due to her extramarital relation with husband of the respondent No.2, she is being ill-treated or subjected to harassment by her husband and his relatives, then also it is difficult to say that the applicant is accountable to answer the charge for offence punishable under Section 498-A of the I.P.C. For, she is not related to husband of the respondent No.2 nor can be regarded as the person, who can fall within explanation (a) or (b) of Section 498-A of the I.P.C."

To the similar effect is the law laid down by the same High Court in *Ranjana Gopalrao Thorat v. State of Maharashtra*, [2007 CRI.L.J. 3866].

A learned Single Judge of the Delhi High Court, however, preferred to follow *Shivcharan Lal Verma (supra)* in preference to *Reena Aggarwal (supra)* to hold that precedentially the former is binding on the High Court, stating :- " Therefore the decision in *Shivcharan Lal Verma (supra)* will clearly take precedence over the decision in *Reema Aggarwal (supra)*. That being the case, the arguments advanced by the learned Counsel for the petitioners would have to be accepted that the provisions of Section 498-A IPC would not be attracted inasmuch as the marriage between Mohit Gupta and Shalini was null and void and Mohit Gupta could not be construed as a 'husband' for the purposes of Section 498-A IPC. Clearly, therefore, the charge under Section 498-A IPC cannot be framed and the Metropolitan Magistrate had correctly declined to frame any charges under Section 498-A IPC."

Similar view was taken by a learned Single Judge of the same High Court in *Capt. Rajinder Tiwari v. The State (NCT of Delhi)*, [Criminal Revision P. No. 872 of 2006 decided on 14.12.2006], stating :

"9. As already indicated above, insofar as the charge under Section 498A IPC is concerned, that issue is no longer open for debate. The same has been decided by this Court in the case of *Mohit Gupta & others (supra)* applying the ratio of the Supreme Court decision in the case of *Shivcharan Lal Verma (supra)*. Since the marriage between *Rajinder* and *Meenakshi* was a nullity in view of the pendency of *Rajinder's* divorce proceedings qua his first wife, the offence under Section 498A, which is specific to "husband", would not be maintainable, therefore, the impugned order needs to be corrected on this ground also."

20. We are, however, not oblivious of the fact that a learned Single Judge of the Kerala High Court in *John Idiculla v. State of Kerala*, [2005 M.L.J. (CrL.) 841] relying on *Reema Agarwal (supra)* gave a wider meaning to the word "second wife" to hold :- "25. The test under Section 498A IPC is whether in the facts of each case, it is probable that a woman is treated by friends, relatives, husband or society as a "wife" or as a mere "mistress". If from the pleadings and evidence the Court finds that the woman concerned is regarded as wife and not as a mere mistress, she can be considered to be a 'wife' and consequently as 'the relative of the husband' for purpose of Section 498A IPC. Proof of a legal marriage in the rigid sense as required under civil law is unnecessary for establishing an offence under Section 498A IPC. The expression "marriage" or "relative" can be given only a diluted meaning which a common man or society may attribute to those concepts in the common parlance, for the purpose of Section 498A IPC. A second wife who is treated as wife by the husband, relatives, friends or society can be considered to be 'the relative of the husband' for the purpose of Section 498A of IPC. If she inflicts cruelty on the legally-wedded wife of the husband, an offence under Section 498A IPC will not lie against her."

21. Applying the principles laid down in various decisions referred to above, we have no doubt, in our mind, that the appellant is not a relative of the husband of the first informant.

22. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed.