

SUPREME COURT OF INDIA

Ushaben

Vs.

Kishorbhai Chunilal Talpada

Crl.A.No.562 of 2012

(Aftab Alam and Ranjana Prakash Desai JJ.)

23.03.2012

JUDGMENT

SMT.RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. The challenge in this appeal is to the order passed by a learned Single Judge of the High Court of Gujarat partly allowing the petition filed by the respondents under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Code). The prayer made by respondents 1 to 9 was to quash the complaint filed by the appellant against them under Sections 498A, 494, 506(2) read with Section 114 of the Indian Penal Code (for short, IPC) and under Sections 3 and 7 of the Dowry Prohibition Act.

3. The appellant is the original complainant. Respondents 1 to 9 are original accused 1 to 9 respectively. Respondent 2 is the husband of the appellant, respondents 8 is the second wife of respondent 2 and respondents 1, 3 to 7 and 9 are family members of respondent 2 or respondent 8.

4. Gist of the facts stated in the complaint is as under: The appellant got married to respondent 2 on 7.12.2000. She lived with respondent 2 in the joint family till 18.1.2006. During this period the appellant gave birth to two children. On 30.7.2007 the appellant was forced to leave the matrimonial home due to the cruelty meted out to her in the matrimonial home. During the subsistence of the appellant's marriage with respondent 2 in 2008, respondent 2 got married to respondent 8. Sometime in 2009, when the appellant came to know about the

second marriage of respondent 2, she lodged a complaint against respondent 1 to 9 for alleged commission of offences punishable under Sections 498A, 494, 506(2) read with Section 114 of the IPC and under Sections 3 and 7 of the Dowry Prohibition Act. Nadiad Rural Police Station, District Kheda registered it as CR No. 24 of 2009.

5. Thereafter, respondents 1 to 9 moved an application before the Gujarat High Court under Section 482 of the Code, contending, inter alia, that cognizance of offence under Section 494 of the IPC can be taken only on the complaint made by an aggrieved person and in as much as in this case the complaint is not made by the aggrieved person, the police could not have taken cognizance of offence under Section 494 of the IPC.

6. Before the High Court, a statement was made that respondents 1 to 9 were not pressing prayer made in the petition for quashing of offences under Section 498A, 506(2) read with Section 114 of the IPC as against respondents 1 to 5. It was, however, made clear that prayer for quashing of offence under Section 494 of the IPC was being pressed against all the accused i.e. respondents 1 to 9.

7. The High Court accepted the contention raised by respondents 1 to 9 and relying on its earlier judgment in *Babubhai Madhavlal Patel and Anr. vs. State of Gujarat*[1], the High Court quashed the complaint qua respondents 6 to 9 against whom only allegation of bigamy was made. So far as respondents 1 to 5 are concerned the High Court ordered deletion of offence under section 494 of the IPC from the complaint and directed that the investigation of the other offences should proceed. Being aggrieved by the said judgment, the appellant has filed this appeal.

8. We have heard learned counsel appearing for the appellant and learned counsel appearing for respondents 1 to 9. At the outset, we must note that the appellant-wife has lodged the instant complaint inter alia alleging commission of offence under Section 494 of the IPC. The complaint is at investigation stage. The police can, therefore, legally investigate it. However, it is necessary to refer to certain provisions of the Code and IPC because the High Court in our opinion has wrongly relied on its earlier judgment in *Babubhai Patel* which relates to cognizance of offences falling in Chapter XX of the Code by a Court.

9. We shall now quote the relevant sections of the IPC and the Code. Section 494 of the IPC falls in Chapter XX of the IPC. Chapter XX pertains to offences relating to marriage. So far as it is relevant, Section 494 reads as under:

494. Marrying again during lifetime of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 190 of the Code states when cognizance of offences can be taken by a Magistrate. It reads as under:

190. Cognizance of offences by Magistrates-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 198 of the Code pertains to prosecution for offences against marriage. Sub-Section 1 thereof is relevant. It reads as under:

198. Prosecution for offences against marriage.- (1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.

Section 198 (1)(c) of the Code reads as under :

198(1)(c). Where the person aggrieved by an offence punishable under (section 494 or Section 495) of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother,

sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court) by any other person related to her by blood, marriage or adoption).

The above provisions indicate that whereas Section 190(1) empowers the Magistrate to take cognizance of any offence, upon receiving complaint of facts which constitute such offence; upon police report of such facts; upon information received from any person other than a police officer or upon his knowledge that such offence has been committed, Section 198 which relates to prosecution of offences against marriage brings in the concept of complaint by an aggrieved person and Section 198(1)(c) explains how far the scope of term 'aggrieved person' can be extended in the context of offence under Section 494 of the IPC.

10. We must now turn to Section 198-A of the Code. It reads thus:

198-A. Prosecution of offences under Section 498A of the Indian Penal Code. - No Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

11. A conjoint reading of the above provisions makes it clear that a complaint under Section 494 of the IPC must be made by the aggrieved person. Section 498A does not fall in Chapter XX of the IPC. It falls in Chapter XXA. Section 198A which we have quoted hereinabove, permits a court to take cognizance of offence punishable under Section 498A upon a police report of facts which constitute offence. It must be borne in mind that all these provisions relate to cognizance of the offence by the court.

12. Complaint is defined under Section 2(d) of the Code. The definition reads as under:

2(d). Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

Explanation to Section 2(d) makes it clear that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant.

13. Above provisions, lead us to conclude that if a complaint contains allegations about commission of offence under Section 498A of the IPC which is a cognizable offence, apart from allegations about the commission of offence under Section 494 of the IPC, the court can take cognizance thereof even on a police report.

14. Reliance placed by the High Court on its earlier judgment in Babubhai Patel is misplaced. In that case, the High Court was dealing with all offences falling under Chapter XX of the IPC. Initially, the accused were charged under Section 417 read with Section 114 of the IPC. That charge was given a go-by and a fresh charge in respect of Sections 493 to 496 of the IPC was framed. These, offences fall in Chapter XX of the IPC. Therefore, the High Court held that cognizance thereof can be taken by the Magistrate only on the basis of complaint filed under Section 190(1)(a) of the Code by an aggrieved person. That judgment cannot be applied to the present case. Facts of that case were different and there the High Court was dealing with cognizance of the offences falling under Chapter XX by the Magistrate. Upshot of the above discussion is that, no fetters can be put on the police preventing them from investigating the complaint which alleges offence under Section 498A of the IPC and also offence under Section 494 of the IPC. In the circumstances, the appeal must succeed. The impugned order is set aside. Obviously, therefore, the direction to delete Section 494 of the IPC is set aside. The police shall investigate the complaint in accordance with law.

15. The appeal is disposed of in the aforestated terms.