

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. R 462/2002

19.05.2003

DATE OF DECISION: May 19, 2003

Savitri Devi .....Petitioner.

Through Mr. H C Mittal,Adv.

Versus

Ramesh Chand and Ors. ....Respondents

Through Mr. R P Bhardwaj, Adv.

CORAM:-

HON'BLE MR. JUSTICE J.D. KAPOOR

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest ?

J.D. KAPOOR, J:

1. Though State has the locus standi to prefer such petitions, since petitioner is the wife and on her complaint case was registered and charge sheet was filed, and has grievance against the order dated 13.3.2002 passed by Ms. Nisha Saxena, Metropolitan Magistrate this is being entertained.

2. Vide impugned order charge for the offence punishable under Section 406 IPC for misappropriation of dowry articles and istridhan was framed against her husband only and her father-in-law, brothers-in-law and sister-in-law (wife of of one of the brothers of her husband) and her unmarried sister-in-law were discharged and charge for the offence under Section 498 A IPC i.e. harassment of the wife by the husband and his relatives for inadequate dowry or non-fulfillment of demands of dowry was framed against the husband and father-in-law alone. According to the petitioner/wife, every member of the family though the elder brother of the husband died during the proceedings should have been subjected to trial for both the offences viz offence under Section

498A IPC as well as 406 IPC.

3. The allegations in brief are that after marriage her in-laws specially her father-in-law and her husband and the brother-in-law did not like the dowry articles and expressed their unhappiness that they were not given Hero Honda and cash of Rs.50,000/-. The wife of elder brother of her husband Ms. Mukesh and the sister of her husband did not like the clothes given for them and Ms. Mukesh represented that if Sanjay had married her younger sister then he would have got more dowry. The main allegations of harassment were against the husband and father-in-law. There were no allegations of demand of dowry against other relatives.

4. The main contention of the learned counsel for the petitioner is that non-acceptance of the gifts by respondents and others tantamount to harassment and cruelty as defined in Section 498A IPC.

5. Section 498A IPC provides as under :-

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 her su

6. A bare perusal shows that the word 'cruelty' encompasses any of the following elements :-

(i) Any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or

(iii) any 'wilful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman.

7. So far as criminality attached to word 'harassment' is concerned, it is independent, of 'cruelty' and is punishable in the following circumstances:-

- (a) Where the harassment of the woman 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
- (b) Where the harassment is on account of failure by her or any persons related to her to meet such demand.

8. It is apparent, neither every cruelty nor every harassment has element of criminal culpability for the purposes of Section 498-A. There is no problem where there is physical violence and infliction of injury which is likely to cause grave injury or danger to life, limb or health. In such cases, facts will speak for themselves. We have adopted this definition from English Law though for the purpose of divorce on the ground of cruelty, Indian Law defines it as a conduct as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. Element that cruelty should be of such nature as to cause 'danger' to life, limb or health or as to give rise to reasonable apprehension of such a danger does not exist in Indian Laws of Divorce. This ingredient is of much sterner and higher degree. Supreme Court in *Dr. N.G. Dastane Vs. Mrs. S. Dastane* (1975) 2 SCC 326 has referred to this aspect of 'cruelty' like this:-

ry, as under the English law, that the cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly danger to life, limb or health or a reasonable apprehensio

9. It would also be unwise for me to categorize specific acts or conduct which are capable of amounting to cruelty as such categorization cannot be put in strait jacket mould. In this regard, I am reminded of words of wisdom of LORD TUCKER who said :-

cial pronouncement to create certain categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances of amounting to cruelty in cases where no physical violence is averred. Every such act must be judged in relation to its surrounding circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse, and the offender's knowledge of the actual or probable effect of his conduct on the other's health are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies. It is, generally speaking, not possible to compartment acts for the purposes of relevance as being grounds so as to constitute cruelty or less gross so as not to constitute cruelty, though there may be extreme

cases where the acts in themselves are so trivial as to justify dismissal of an action for lack of relevance without proof. It is with regard to the

(Jamieson Vs. Jamieson (1952) 1 All E R 875)

10. When analysis of such human sensibilities, affairs and conduct is under discussion, I would be failing if I don't quote Lord Denning, a celebrated and legendary Judge of this century. Lord Denning says :-

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may-not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty

(Kaslefsky Vs. Kaslefsky (1950) 2 All E R 398)

11. Supreme Court of India laid the following definition of "mental cruelty" in V.Bhagat Vs. Mrs.D.Bhagat AIR 1994 SC 710:-

the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

The word "cruelty" is to be used in relation to human conduct or human behavior. It is the conduct in relation or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.

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12. In S.Hanumanta Rao Vs. S.Ramani 1999 (3) SCC 620, Supreme Court observed as under:-

13. Parameters of what constitutes cruelty in matrimonial affairs have been well carved out in American Jurisprudence 2nd edition Vol 24 page 206. These are:-

to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual und

14. Thus to ascertain marital cruelty though ordinarily whole series of acts or conduct should be weighed to infer cruelty yet an isolated act can lead to inference of cruelty if its gravity or seriousness is of such a magnitude that it is likely to cau

se grave injury to physical or mental health of victim spouse. Composite picture should be drawn as to the acts, incidents or conduct for ascertaining whether these amount to cruelty-physical or mental. Unless such kinds of physical or mental ill-treatments when taken together lead to the inference of persistent cruelty, charge of cruelty cannot stick.

15.Though intention to cause injury is not an essential ingredient regard may be had as to the actual intention or knowledge on the part of the offending spouse as to actual or probable effect whether it would cause injury to physical or mental health.

Again acts or conduct should be judged from the angle of a person possessing ordinary intellectual capabilities.

16.For the purpose of Section 498A IPC which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives-near or distant, living together or separately. Ingredients of 'cruelty' as contemplated under s

ection 498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage i.e. Divorce. In constituting 'cruelty' contemplated by Section 498A IPC the acts or conduct should be either such that may cause danger to life, limb or health or cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "wilful" i.e intentional. So to invoke provisions of Section 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health..

Further conduct that is likely to drive the woman to commit suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with marital life.

17. Similarly offence of 'harassment' is peculiar to Indian conditions and society where evil of dowry and its perpetuation through customary gifts or demands is widely prevalent and is eating the very vitals of matrimony and tearing familial social fabric apart. To curb this evil, the acts of not only the husband but the entire household have been brought within the net of "harassment of a woman" if done to coerce her or her relatives to fulfill the unlawful demands for property or valuable security.

18. The word 'harassment' in ordinary sense means to torment a person subjecting him or her through constant interference or intimidation. If such tormentation is done with a view to 'coerce' any person and in this case, the wife to do any unlawful act and in this case to meet the unlawful demand of property or valuable security, it amounts to "harassment" as contemplated by Section 498-A. Word 'Coercion' means persuading or compelling a person to do something by using force or threats. Thus to constitute "harassment" following ingredients are essential:-

- (i) Woman should be tormented i.e. tortured either physically or mentally through constant interference or intimidation;
- (ii) Such act should be with a view to persuade or compel her to do something which she is legally or otherwise not expected to do by using force or threats;
- (iii) Intention to subject the woman should be to compel or force her or her relatives to fulfill unlawful demands for any property or valuable security.

19. Only allegation against the respondents is that they did not like the clothes brought by the petitioner as customary gifts for relatives of the husband. One of the sisters-in-law remarked that had the marriage taken place with her sister, more dowry would have been received. These allegations when tested on the anvil of aforesaid tests, do not make out a case of either 'cruelty' or 'harassment' as contemplated by section 498A IPC. Non-acceptance of gifts might have hurt her feelings and other remarks might have been unkindly and incisive but by no stretch of imagination, such a conduct involves any of the ingredients of either offence under section 498A IPC or 406 IPC. Neither such an act or conduct has the effect of driving the woman to commit suicide nor of causing grave injury nor is likely to cause danger to life or limb nor did it amount to tormenting her

either physically or mentally to compel or force her or her relatives to fulfill the demands of any property or valuable security.

For the foregoing reasons, the petition is highly misconceived and is being used as a tool to hold the entire household to ransom and jeopardy. Petition is dismissed.

20. It appears that the legislature was mindful of the fact and situation that this provision may be exploited that it defined 'cruelty' and for that purpose "harassment" falling within the parameters of "intentional conduct" of such a degree that may either drive the woman to commit suicide or cause danger to life, limb or health or cause 'grave' injury. Of course "health" means not only physical but mental also. But unfortunately, these provisions have been abused by the Investigating and Prosecuting Agencies and exploited by the women and their relatives to such an extent that these have proved to be most ineffective in curbing the evil of dowry as well as disciplining the husband and his relatives to treat the woman in human and humane manner and give the bride or wife proper respect and honour.

21. Before parting, I feel constrained to comment upon the misuse of the provisions of Section 498A/406 IPC to such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of the society at large.

To leave such a ticklish and complex aspect of proposition as to what constitutes 'marital cruelty' and 'harassment' to invoke the offences punishable under sections 498A/406 IPC to a lower functionaries of police like Sub Inspectors or Inspectors whereas some times even courts find it difficult to come to the safer conclusion is to give the tools in the hands of bad and unskilled masters.

22. This Court has dealt with thousands of cases and matters relating to dowry deaths and cases registered under Section 498A./406/306 IPC arising out of domestic violence, harassment of women on account of inadequate dowry or coercion of the woman for not fulfilling the demand of dowry and hundred of divorce cases arising there from. Experience is not so happy nor is implementation or enforcement of these laws is anything but satisfactory or punctilious.

23. These provisions were though made with good intentions but the implementation has left a very bad taste and the move has been counter productive. There is a growing tendency amongst the women which is further perpetuated by their parents and relatives to rope in each and every relative- including minors and even school going kids nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad

and married, unmarried sisters, sister-in-laws, unmarried brothers, married uncles and in some cases grand-parents or as many as 10 to 15 or even more relatives of the husband. Once a complaint is lodged under Sections 498A/406 IPC whether there are vague, unspecific or exaggerate allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run here and there and force them to hide at their friends or relatives houses till they get anticipatory bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out.

24. These provisions have resulted into large number of divorce cases as when one member of the family is arrested and sent to jail without any immediate reprieve of bail, the chances of salvaging or surviving the marriage recede into background and marriage for all practical purposes becomes dead. The aftermath of this is burdensome, insupportable and miserable more for the woman. Remarriage is not so easy. Once bitten is twice scared. Woman lacking in economic independence starts feeling as burden over their parents and brothers. Result is that major bulk of the marriages die in their infancy, several others in few years. The marriage ends as soon as a complaint is lodged and the cognizance is taken by the police.

25. It was primarily a social problem and social evil but has been allowed to be dealt with iron and heavy hands of the police. These provisions have tendency to destroy whole social fabric as power to arrest anybody by extending or determining the definition of harassment or cruelty vests with the lower police functionaries and not with officers of higher rank who have intellectual capacity to deal with the subject.

26. For ages the cruelty, desertion and adultery have been ground for divorce which were to be proved in civil courts. Now the police and that too its lower functionaries have been made the decision making authority to conclude whether the harassment or the cruelty as brought out in the statement of the complainant wife is sufficient to put all the relatives including school going minor brothers and sisters of the husband behind the bar. Such was neither the intention nor the object of the legislation

27. It is rightly said sometimes the remedies are worse than the perils or disease. Having seen and experienced the enforcement of these laws for decades, time has come to take stock and review them as thousands of marriages have been sacrificed at the

altar of this provision. In one metropolis alone, thousands divorce cases arising from the cases under Section 498A/406 IPC are pending in Courts. There are equal or more number of marriages which are in limbo. What else is it if not a social catastrophe ? This should be a matter of concern for social scientists, law-makers and Judges also. Sterner provisions have failed to make any dent. Menace and evil of dowry is still looming large. In the words of Supreme Court (Pawan Kumar's Case AIR 1998 SC 958) in spite of stringent measures, sections of society are still boldly pursuing this chronic evil to fulfill their greedy desires..

28.It does not mean that the wolves mesquarding in the human flesh should be given a free hand. They should rather be dealt with iron hand. Again it is because of tendency to involve innocent persons that the Supreme Court has cautioned the court

29.To start with, marital offences under Sections 498A/406 IPC be made bailable , if no grave physical injury is inflicted and necessarily compoundable. If the parties decide to either settle their disputes amicably to salvage the marriage or decide to put an end to their marriage by mutual divorce, they should be allowed to compound the offences so that criminal proceedings don't chase them if they want to start their marital life afresh or otherwise. The past should not haunt them nor the hatchet they have buried should be allowed to be dug up and mar their present life or future married life.

30.Lastly in view of sensitivity of such offences and in order to avoid clumsiness in human relations and viewing this problem from human and social point of view, and the law as it stands today it is required that the investigation into these offences be vested in civil authorities like Executive Magistrates and after his finding as to the commission of the offence, cognizance should be taken. Till such a mechanism is evolved, no police officer below the rank of ACP for the offences under section 498A/406 IPC and D.C.P for the offence under Section 304-B IPC i.e dowry death should be vested with investigation and where minor school going children are named, they shall not be arrested and be sent to the court for taking cognizance and further proceedings. Their arrest ruin their future life and lower them in their self esteem. This court has even dealt with the bail applications and prosecution of children merely for the fact that their names also figured in the complaint lodged by the wife. In certain cases even grand-parents of the husband who are in their eighties and nineties suffer this traumatic situation.

31. There is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.

32. These ground realities have persuaded this court to recommend to the authorities and law makers to have a review of the situation and legal provision.

33. Copy of the order be sent to Law Secretary, Union of India.

May 19, 2003 J.D.KAPOOR

ssb JUDGE