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## Hubby can be jailed despite patch-up

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MUMBAI: A high court bench comprising Chief Justice Swatanter Kumar, Justice Dhananjay Chandrachud and Justice J P Devadharowever has ruled that cruelty-to-wife cases can't be settled out of court. However, the three judges also held that an HC can definitely exercise its power under its inherent jurisdiction, and quash a 498-A complaint in the larger interests of justice, to maintain matrimonial harmony and to prevent abuse of the legal process. The court specified the principles of criminal jurisprudence that need to be followed.

The judgment essentially says that a husband or his family facing a charge under 498-A of inflicting physical or mental cruelty on the wife cannot effect a settlement with her even if the two have patched up or the woman has agreed to forgive her husband or if the charges are based on flimsy pretexts to begin with and prima facie false. This means the husband can get arrested and even convicted and sent to jail for up to three years.

But there could be a way out from the legal quagmire that a husband may find himself in once a 498-A case is slapped on him. For that, however, only the HC can help. The HC has to be moved for quashing of the first information report (FIR), probe or criminal proceedings. The judgment has held that a HC has the power to quash such non-compoundable offences so as "to secure the ends of justice". However, the judges also held that quashing of a complaint has to be on the basis of the facts of each case and the power must be "sparingly used".

The 102-page verdict said, "An offence of cruelty under IPC 498-A is not merely a crime between husband and wife but a crime against society, and therefore the parties themselves cannot compound the offence." The judges have, significantly, also held that not just offences under 498-A, but also other offences such as murder, rape, attempt to murder and causing grievous hurt—which are not specifically mentioned in the law as 'compoundable' offences—cannot be settled between the complainant and the accused. Section 320 of the CrPC lists offences that can be settled between parties at any stage of the prosecution.

The issue was referred to a full bench by a single judge of the Bombay high court who had to decide on an appeal filed by a Solapur-based husband Abasaheb Honmane who, after being held guilty of an aggravated form of bigamy and sentenced to jail for five years, had sought the leave of the court to compound the offence and also to set aside his conviction.

A full bench is normally formed in exceptional circumstances when there are conflicting judgments of two or more division benches. Here, it was a single judge who felt that a division bench judgment was not the correct interpretation of law and hence referred it to the Chief Justice since it was an important law point that needed to be settled.

Besides, before the court there were ten other similar cases on the question of compounding of offences such as robbery, dowry harassment, kidnapping, causing serious hurt with weapons, causing a miscarriage without the woman's consent and so on. In each case, the prayer was that the FIR should be quashed, as the complainant had agreed to settle the matter. Most of these cases had arisen out of disputes in a matrimonial relationship.

The Chief Justice, who wrote the judgment for the bench, noted, "No statute can provide for all situations when the legislature enacts a law." He said this as one of the points of reference was also whether the high court had the inherent powers to quash or compound complaints when this was not spelt out clearly in any law, including the CrPC, which is the procedural Bible for the criminal law courts.

The full bench held that Section 482 of the CrPC which speaks of the court's "inherent power" to pass any

order to "meet the ends of justice" has "intentionally" been worded widely by the legislature to ensure a larger impact on the procedural law governing investigations and criminal trials. "The inherent powers of the high courts are not meant to be static just like the law is not static and develops and varies according to the progress of time and need of society."

The HC noted that until recently even a complaint of cheque bouncing was not compoundable but the government recently amended the law to allow parties to go in for "out-of-court settlements".

Amit Desai, an expert defence counsel, said, "There is a need for criminal law to be amended to make an offence such as Section 498-A compoundable. It is time for the legislature to consider a change in the law since these are private disputes."

The legislature has provided an alternative statute—the Protection of Women from Domestic Violence Act, 2005, to provide greater safeguards and protection to women by providing for a chance of "resettlement of matrimonial home and relationship prior to actual registration of crime under Section 498-A of IPC".

But the legislature still did not make the Section 498-A offence compoundable. "While interpreting and implementing the law, legislative wisdom has to be given preference," the judgment said, adding, "It can very well be presumed that the legislature, while enacting a law, is aware of the difficulties faced in implementation of such a law."

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