

(2005) 05 KL CK 0028

High Court Of Kerala

Case No: Criminal M.C. No. 9610 of 2002

John Idiculla

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: May 23, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 156(3)
- Mental Health Act, 1987 - Section 2
- Penal Code, 1860 (IPC) - Section 34, 494, 498A

Citation: (2005) CriLJ 2935 : (2005) 2 ILR (Ker) 814 : (2005) 3 KLT 20 : (2005) 3 RCR(Criminal) 987

Hon'ble Judges: K. Hema, J

Bench: Single Bench

Advocate: K. Ramakumar and C.V. Bindu, for the Appellant; V.N. Achutha Kurup and Tresa Rani George, Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Hema, J.

An interesting question arises in this case. Can the so-called "second wife" of the husband who married her during the subsistence of his earlier legal marriage, be treated as "the relative of the husband", for the purpose of Section 498A of the Indian Penal Code (IPC, for short)? If so, under what circumstances? Will an offence u/s 498A of IPC lie against such a "second wife" if she inflicts cruelty on the legally-wedded wife of the husband.

2. Here are the relevant factual details, as unfurled from the records: second respondent herein filed a complaint/Annexure-I against the petitioners as accused 1 and 2, and also against four other members of the husband's family as accused 3 to

6 alleging offences under Sections 498A, 494 and 34 of IPC before the Magistrate's Court. The complaint was forwarded by the lower court to Police u/s 156(3) Cr.P.C. for investigation and report. Police after investigation, registered a crime and filed charge sheet Annexure-D against accused 1 to 6 for the offences under Sections 498A, 494 and 34 IPC. But, the Court below did not take cognizance of offences u/s 494 IPC. Specific instances of matrimonial cruelty are narrated in the complaint. Hence, the accused are proceeded against only under Sections 498A and 34 IPC.

3. According to Learned counsel appearing for the petitioners, an offence u/s 498A IPC will lie only against the husband and/or "the relative of the husband" of a woman. But, the second petitioner who is not a legally-wedded wife as per the allegations in the complaint itself cannot be treated as "the relative of the husband" and hence she cannot be held liable for offence u/s 498A IPC. To understand the depth of the above contention, it is necessary to examine the language of the section first. Section 498A of IPC reads as follows:

"Section 498-A: Husband or relative of the 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 purposes 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 such demand".

4. A reading of the Section 498A IPC shows that an offence under the said section will lie only against the husband and/or his relatives. But who can be treated as a relative of the husband? Borrowing meaning of the expression, "relative" from other enactments like Mental Health Act etc., and also the dictionary, it was strenuously argued that a person can be said to be a "relative" of another only if such person is related to the other "by blood, marriage or adoption". Learned counsel for petitioners made reference to Section 2(t) of the Mental Health Act, 1987 which defines "relative" as follows: "relative" includes any person related to the mentally ill person by blood, marriage or adoption". Concise Oxford Dictionary, Eighth Edition was also relied upon to explain the meaning of the word "relative". As per the said Dictionary, "relative" means: "A person connected by blood or marriage". The meaning of "relative" in Webster's Dictionary can also be looked into thus: "Having

relation to or bearing on something; close in connection; pertinent; relevant; not absolute or existing by itself; depending on or incident to something else; something considered in its relation to something else; a person connected by blood or affinity, esp. one allied by blood; a kinsman or kinswoman".

5. Based on the above facts, it was argued that a "relative" is a person who is connected to another by "blood, marriage or adoption". But, nobody has a contention in this case that the petitioners have any connection between them by blood. There is also no case that there is an adoption in this case. But, the allegations in the complaint in this case reveal that the connection between the petitioners is only through the marriage. The narration in the complaint also shows that the marriage between the petitioners took place during the subsistence of the earlier legal marriage of the first petitioner/husband with the complainant. Hence it was strenuously contended by learned counsel for petitioners that even if the allegations in the complaint is accepted, there is no valid "marriage" between the petitioners and consequently, it cannot also be said that they are related by marriage.

6. Another argument raised is that a relative of the husband is a person with whom the wife will normally interact after marriage, but such an interaction between the first and second wife is out of question in the peculiar facts of this case. Therefore, on this ground also, the second petitioner cannot be said to be "the relative of the husband". According to learned counsel for petitioners, law can treat a second wife whose marriage is invalid only as a "mistress" and not as a "wife" and hence it will be paradoxical and even ridiculing for this Court to hold that such a second wife will be liable for offence u/s 498A of IPC, conferring upon her status of a wife and relative of the husband by marriage.

7. I do agree that the above arguments are thought-provoking. But on a deeper probe into the relevant aspects, I can only reject them for the following reasons: Firstly, definition of a word or expression given under other enactments cannot be imported into the situation presently arising in this case to interpret the word "relative". The word "relative" appears in other enactments in a totally different context than what is stated in Section 498A IPC. It cannot be disputed that there are instances in which even the same word which is undefined and used in the same enactment in different places may have different meanings depending upon the context in which the word, may appear. It has also to be borne in mind that the word "relative" is not defined under the Indian Penal Code. This can be or may be a deliberate omission. Legislature must have intentionally left it open for the Court to interpret the meaning of the expression in a given case depending on the context.

8. So, the meaning of word "relative" coming u/s 498A IPC requires to be interpreted independently, looking into the circumstances in which it is used in the section, realising the purpose of the legislation, understanding the intention of the lawmaker behind introduction of the provision, discerning the object sought to be

achieved and the mischief sought to be suppressed by the particular provision. In short, mainly purposive construction has to be the rule which the Court must follow to interpret the relevant expression in Section 498A of IPC.

9. While doing so, as a first step towards my attempt in understanding the real import of the word "relative", I think I can safely rely upon its dictionary-meaning. As per dictionaries, which I have already referred to earlier, a "relative" is a person connected to another "by blood, marriage or affinity". But, as per personal law of the parties in this case, marriage of the second petitioner cannot be said to be a valid one since it took place during the subsistence of an earlier marriage of the first petitioner/ husband with the complainant. In the strict legal sense therefore, there cannot be any relationship between such a man and woman by marriage. A second wife for the above reason cannot normally be given status of a "wife" because of absence of a legally valid marriage.

10. But, such an inference may not be possible in all circumstances. It will be interesting to note that in certain situations law itself has diluted the rigidity of concept of marriage. For example, u/s 125 of the Code of Criminal Procedure. Though the section deals specifically with the claim of a "legally-wedded wife", it is well-settled that even if there is no strict proof of a legal marriage between the man and woman, a woman will be entitled to maintenance as a "wife": u/s 125 of the Code, if it is established that by continued cohabitation between them for a long period they are treated as husband and wife by the society. In other words, strict proof of marriage is not insisted upon u/s 125 of the Code, though as per language of the section, it is a legally-wedded wife who will be entitled to maintenance.

11. It is also striking to note that the concept of "marriage" is liberally construed for the purpose of Section 498A IPC in a recent celebrated decision of the Supreme Court in [Reema Aggarwal Vs. Anupam and Others](#) . It was held in the said decision that a liberal interpretation is to be given to the expression "marriage", bearing in mind the object of section 498A of IPC. While deciding the question as to who could be covered by the expression "husband" coming u/s 498A IPC, it was held that the concept of marriage to constitute the relationship of "husband" and "wife" may require a liberal and different approach when the question of curbing a social evil arises. It was a case in which it was contended that the marriage between the husband/accused and wife/complainant was not legal in view of an existing earlier marriage of the husband and hence the accused /husband cannot be held liable u/s 498A IPC as the husband of the complainant.

12. It is worthy to extract the relevant portion from [Reema Aggarwal Vs. Anupam and Others](#) , as follows:

"The concept of marriage to constitute the relationship of "husband" and "wife" may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an

anathema when the question of curbing a social evil is concerned.....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 S 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions".

13. On going through the facts of the case in the decision cited above, I find that the complaint in that case was filed by a "second wife" whose marriage with the accused/husband was not strictly legal in view of an earlier marriage of the accused/husband. (Hers was also a second marriage) Despite this fact, the Supreme Court held that the alleged "husband" is covered by Section 498A IPC, giving a liberal interpretation to the term "marriage". Thus it follows that as per the dictum laid down in the said case, a complaint filed against the husband by such a "second wife" whose marriage is not legally valid is maintainable u/s 498A IPC. If then, can such a second wife, supposing she is guilty of inflicting cruelty on the legally-wedded wife of her alleged husband be exonerated from a charge under the same section that too, on the ground of an invalid marriage?

14. Certainly not. Nothing confuses my thought now. I have no doubt that it will be unjust, unfair, illogical and inequitable if I may hold otherwise. When Law and Precedents water down the stiffness of an expression in aid of a victim-woman, I cannot even make a wild guess that the same expression will be kept harder and solid for protecting an erring-woman. Law cannot blow hot and cold. Precedents can neither play hide and seek. If a second wife whose marriage is not strictly legal commits matrimonial cruelty on the legally-wedded wife of her alleged husband, she cannot be allowed to wriggle out of the criminal liability u/s 498A IPC on the ground of invalidity of marriage.

15. Before I proceed any further, I shall look at the issue from another angle also. A glance through the facts of this case will be necessary here. As per the allegations in this case, the second marriage of the petitioners was solemnised at the instigation of the husband's relatives. They were residing together as husband and wife to the knowledge of all concerned. Over more half of the husband's property was allegedly assigned in favour of the second wife, treating her as his own "wife". It was the third accused who is the brother-in-law of the husband who executed the assigned deed in favour of the second petitioner, on the strength of a power of attorney executed by the husband in favour of him. The assignment was effected allegedly as instigated by the second wife. The property conveyed to the second wife was the one in which the legally-wedded wife was residing. It prima facie appears from the allegations in the complaint that for all purposes the second wife was treated as none other than the wife herself.

16. So, what could be the nature of the relationship between such a second wife and husband? Firstly, a second wife who is accepted as "wife" by the husband and

relatives gets recognised as such by friends and society also. She then, as a "wife" starts exploring under the shade of matrimonial shelter, the warmth of consortium. She experiences from her husband, the intensity of emotional security. She shares his bed, bears his child. As she becomes the mother of his child, she treasures an everlasting bond which is inbred through the blood of their child. She handles also the strength of her husband's financial support. She thus enjoys everything that his former legally-wedded wife once possessed and enjoyed in her status as a wife at the matrimonial home. Is not such a woman anybody to him?

17. It is significant in this context to bear in mind, some of the probable consequences which are caused by the entry of a second wife to the matrimonial home. I do keep in mind, the inescapable anguish which the second wife caused by permanently destroying all possible chances of a re-union. I also understand, the ever-lingering and burning ache of the havoc that a second wife might have inflicted on a once-upon-close-knit family which was bound by a legal marriage. I am also reluctant to overlook what she unmindfully overturned over night for the children (if any) who may be totally innocent in the whole interlude. If as a matter of fact, the second wife played a willing role in the second marriage, ignoring all the painful consequences, she along with her husband committed on a legally-wedded woman nothing short of an offence of matrimonial cruelty. Can such a woman be allowed to escape.

18. No. I am of the strong view that non-existence of a strictly legal marriage cannot be made a ground for an offending second wife to run away. The invalidity of the marriage can under no circumstances be granted as a licence to her to harass none other than the legally-wedded wife. She shall not be allowed to skip-out of the strong grip of law. I do not think that arms of law are that slender and weak. Those can certainly hold within the fold, such erring woman as well. A Court cannot remain divinely silent to forgive her or calmly shut its eyes to this tragic situation, assert and justify that a second wife is not precisely referred to in the section and hence she is not covered by Section 498A IPC. The legal system in this country cannot shy away and hide itself under the mask of an evasive explanation that a second wife cannot be treated as a "relative" as Legislature did not specifically include the second wife in Section 498A etc.

19. A Court allow the guilty to leave unhurt. Court cannot lightly blame the skill of draftsmanship for that purpose. Court cannot plead helplessness or extend an apology to the society that the second wife is not specifically brought u/s 498A of IPC. Society has faith in Court. Legislature has confidence in Court. Both have great expectations. The Court cannot fail. It shall not. It is wise to remember that framers of law cannot foresee all sets of facts which may arise in each case and include all those in a particular provision. Even if the framers had in their minds a particular situation and they intended to include the same in the provision, it may not always be possible to do it for various reasons. It can also happen that in some cases

Legislature would have knowingly left open the expression undefined leaving it to the Courts to define it in a given set of facts, keeping in mind the object to be achieved by the provision. Courts have therefore to make a serious effort to understand the import of the provision, consistent with the intention of the Legislature and interpret the same.

20. While doing so, I find that the main purpose, as discernible from Section 498A IPC is to deter a person -- whether it be a man or a woman -- from inflicting cruelty on a woman who is considered as a wife. Legislature intended that on account of the marital relationship, no woman shall be subjected to any harassment either physical or mental of the nature stated in the section. The introduction of the section no doubt, is a visible step placed by the Legislature towards eradication of evil of domestic violence, being quite wakeful of the social conditions of a married woman in this country. Section 498A IPC is introduced into the statute to curb the social evil of matrimonial cruelty which a woman is made to suffer because of her marriage and her status as a wife. So, whatever be the gender of the offender, he or she is bound to meet the consequences u/s 498A IPC.

21. When cruelty to a married woman became rampant and widespread in our society, Legislature thought it fit to introduce Section 498A into the Indian Penal Code. It became necessary for law to protect women who suffer the brunt of matrimonial cruelty. One cannot forget the unclad reality that an ordinary Indian girl is brought up in the family by inducing into her, a greater sense of responsibility as a life-partner than even that of a man. She grows up as a woman, hearing the preachings of grandparents, parents, and other elders that she is bound to preserve the sacred matrimonial-tie by paying whatever price it may command. Fingers are often pointed to the ideal of "Bhoomi Devi" (Goddess of Earth) as a symbol of an Indian woman who humps on her palms patiently, the entire weight of the whole world.

22. A girl in the family is normally disciplined at home to bear any hardship and suffering that may shoot up in the matrimonial life with high degree of patience, courage and strength for maintaining the matrimonial bond strong and form. Her role in life as a wife is considered to be greater than that of a man as a husband and she is the one who is expected to make sacrifices to preserve the marriage for the sake of her children and family. This is the culture of this country. This is the tradition of this land. This is the concept which runs through every vein of Indian society. It is therefore quite common to drive a woman back to the matrimonial home, either slighting or ignoring the physical and mental hurt which she must have suffered, reminding her of the future of the children, with the oft-repeated advice: "think of your children!" It cannot be disputed that in certain families in our society, elders even forewarn and prepare a girl to accept a beating or two from her husband as an ordinary tear and wear of family life. Neither a man nor woman of such a family considers it as a sin.

23. Thus, when a girl who is brought up in normal Indian conditions and her character is groomed in the traditional way and when she makes an attempt to live a life for the family and the children by making many sacrifices, she hardens herself in the process to put up with any form of matrimonial cruelty. She learns to endure major part of the injury, whether physical or mental in her own taught-way. She accepts it as part of the solemn duty of a wife believing that those are all for the sake of a sacred purpose. She thus gets equipped herself to suffer any form of matrimonial cruelty without raising much of a protest because she knows that a married woman is expected even by the members of a traditional Indian family and also the society to silently languish her grievances. It may not be an exaggeration that in certain cases, her voice and wail go unheard even by her own kith and kin.

24. It is in this context that Legislature rightly sensed the gravity of the problem of married women in this country and came up to the rescue of such women of our society who genuinely suffer. In the above scenario of all what I have discussed, I find that Legislature would not have intended that to unfetter a woman of this country from matrimonial cruelty, she should plead and prove before Court in the strict legal terms, the legality of the matrimonial relationship which exists between the man and woman who are involved in the case. I also find it extremely difficult to hold that Legislature did not intend to include a second wife in Section 498A IPC as a person not related to the man by marriage. I cannot ignore all the unveiled realities encircling the issue and make an unrealistic approach while interpreting the relevant expression.

25. The test u/s 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 u/s 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 u/s 498A IPC will lie against her.

26. Coming to the facts of this case, I find that there are cogent assertions in the complaint to proceed against the petitioners u/s 498A and 34 of IPC. The Court can go only, by the allegations disclosed from the records at this stage. It is well-settled that a meticulous or a forensic search into such allegations is not what is contemplated at the stage of taking cognizance. If the Court is *prima facie* satisfied that the facts disclosed from the records on the face of it constitute an offence, the

Court can proceed against the accused for such offence. The records in this case support such *prima facie* satisfaction and therefore, the Court below acted only well within its jurisdiction in taking cognizance of offences u/s 498A and 34 of IPC. I will not interfere. I cannot also.

The petition is dismissed.