(1995) 03 BOM CK 0070

Bombay High Court (Goa Bench)

Case No: Criminal Rev. App. No. 28 of 1994

Shri Daud Mohamad Aga and Others		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: March 3, 1995

Acts Referred:

- Penal Code, 1860 (IPC) - Section 100, 109, 34, 498A

Citation: (1995) CriLJ 2947 : (1996) 1 DMC 306

Hon'ble Judges: T.K. Chandrashekhara Das, J

Bench: Single Bench

Advocate: Shri S.D. Lotlikar, for the Appellant; Shri G.U. Bhobe, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The State has instituted prosecution in Criminal Case No. 79/93/C on the file of Judicial Magistrate, F. C., Panaji, against the petitioners at the instance of one Mrs. Farhad Jahan. On the basis of the complaint and on examination of some witnesses, the learned Magistrate has framed charge against the petitioners u/s 498A read with Sections 34 and 100 of Indian Penal Code.

2. The accused in the Criminal Case challenging the order dated 13-1-1994 of the learned Magistrate who framed the charge against them came up with this Revision Application.

3. The peculiar facts in this case are that Mrs. Farhad Jahan who is the de facto complainant is the wife of the eighth accused. The accused No. 3 is the husband of Zabina who is the sister of the de facto complainant and accused No. 2 is the sister-in-law. All the remaining accused are in-laws of the de facto complainant. The de facto complainant had filed a complaint before the Panaji town Police on 22-10-1992 based on which police launched prosecution against the petitioners. As I already stated,

the learned Magistrate after considering the complaint and also certain statements of the witnesses which were recorded by the police, has prima facie concluded that the aforesaid offence have been disclosed against the petitioners and thereupon framed charge against them.

4. Incidentally, I have to note that the subsequent development in this case which results in the disposal of this case on merits appears to be otiose. It is disclosed across the bar that subsequent to the order of the Magistrate, the de facto complainant and 8th petitioner separated by divorce. De facto complainant''s sister also divorced her husband and thus controversy between the parties involved in this case has died down. However the counsel for the petitioners insists that, as the petitioners are in foreign countries pendency of the criminal proceedings may affect their employment in those countries and therefore he requested to have logical termination of the proceedings before the Magistrate pending against his clients. Therefore I am inclined to decide the case on merit.

5. The counsel for the petitioners assailed the order of the learned Magistrate mainly on two grounds. He asserts that the complaint filed by the de facto complainant before the police does not disclose sufficient material to constitute the offences either under the provisions of the Dowry Prohibition Act, 1961 nor u/s 498A read with Sections 34 and 109 of IPC. The petitioner''s counsel has next contended that going by the allegations, the offence seems to have been committed in Dubai and the Magistrate has therefore no jurisdiction to entertain the complaint as it has not been filed where the accused were found.

6. Before I refer to the complaint made by the de facto complainant, I may refer to Section 498A of IPC. This section in the IPC has been inserted by an Amendment of Criminal Law (Second Amendment) Act, 1983 apparently with a view to enforce effectively the provisions of the Dowry Prohibition Act, 1961. Section 498A of IPC reads as follows :-

"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 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."

Going by the charge, the relevant provision for the purpose of the case is falling under Explanation (b) of Section 498A of IPC. By explanation (b), ''cruelty'' has been defined where a woman is harassed with a view to causing her to meet any unlawful demands for any property or valuable security, etc. Therefore in order to come into the ambit of cruelty by husband, the harassment must be in furtherance to extract money unlawfully from the woman by a man. Unless these two ingredients are satisfied, no offence u/s 498A can be alleged to have been committed. On a close reading of the complaint dated 22-10-1992, I find that there are allegations of harassment made by the husband towards the de facto complainant. But nowhere it has been alleged in the complaint that the said harassment has been meted out to extract money or valuable security unlawfully from the de facto complainant. Therefore I see that the important ingredients necessary for constituting an offence u/s 498A have not even been alleged in the petition by the de facto complainant before the police. In these circumstances I cannot agree with the view expressed by the learned Magistrate that there is prima facie case disclosed against the petitioners. The finding of the learned Magistrate is therefore, according to my view, perverse and hence liable to be set aside. Since I have expressed my view in favour of the petitioners on the first point, it is unnecessary for me to go into the second point raised by the learned counsel for the petitioners. Learned Public Prosecutor tried to sustain the charge, but he could not point out the necessary ingredients to constitute the offence has been shown in the complaint.

7. In view of the above, I set aside the order under revision and allow this revision application. Consequently the petitioners stand discharged.

8. There shall be no order as to costs.

9. Revision allowed.