(1991) 03 BOM CK 0092

Bombay High Court

Case No: Criminal Revision Application No. 98 of 1990

Smt. Madhuri Mukund Chitnis		APPELLANT
	Vs	
Mukund Martand Chitnis and another		RESPONDENT

Date of Decision: March 15, 1991

Acts Referred:

- Evidence Act, 1872 - Section 113A
- Penal Code, 1860 (IPC) - Section 498A, 500

Citation: (1991) 1 BomCR 683 : (1991) 93 BOMLR 157 : (1992) CriLJ 111 : (1992) 1 RCR(Criminal) 505

Hon'ble Judges: S.W. Puranik, J; M.F. Saldanha, J

Bench: Division Bench

Advocate: Party in person and A.P. Shah, for the Appellant; K.H. Chopda, Additional Public Prosecutor, for the Respondent

Judgement

Saldanha, J.

This proceeding presents a new dimension to the interpretation of the concept of cruelty as embodied in Section 498-A of the Indian Penal Code. It concerns an area of immense importance because the point at issue is the question as to whether the institution of vexatious legal proceedings by a husband coupled with the misuse of the Court machinery and processes would be tantamount to cruelty as contemplated by Section 498-A of the Indian Penal Code. Breakdown of the marital status is invariably accompanied by the generation of hostility and litigation is an inevitable fall-out. Apart from the normal run of proceedings before the Matrimonial Court, the familiar accompaniment to such a hostile atmosphere is the initiation of other civil and/or criminal proceedings in relation to property matters, etc., the majority of which are virtually superfluous. In the supercharged atmosphere of hostility, the institution of such proceedings could have harsh consequences particularly when search warrants, attachment and such other orders are obtained

and executed with a degree of sadistic vengeance. Cruelty has no definable parameters. It involves acts the result of which cause hurt and often-times agony to the opposite party, be it mental or physical, which in turn has further damaging consequences, the most serious of which is an ultimate suicide. The question, therefore, arises as to whether in a situation of the present type where the wife is at the receiving end, she would be justified in prosecuting the husband for an offence u/s 498-A of the Indian Penal Code if the harassment and torture, which she went through in the course of those unjustified proceedings, were so serious as to drive into a fit of desperation or push her to suicide. First the facts.

2. This Criminal Revision Application has been preferred by the Petitioner-wife who was the original Complainant in Criminal Case No. 829 of 1985 filed before the Judicial Magistrate, First Class, Court No. 4, Pune. The Complaint alleges offences u/s 498-A of the Indian Penal Code against the present Respondent No. 1 who was her husband. The Trial Court, after a rather protracted hearing, held that the charge was established and convicted the husband for the offence u/s 498-A of the Indian Penal code and sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs. 3,000/- in default to suffer simple imprisonment for one month.

3. Against this order of conviction, the husband filed an Appeal to the Sessions Court at Pune, which was numbered as Criminal Appeal No. 138 of 1989. The Appeal came to be decided on 20-2-1990. The learned Sessions Judge, after a detailed consideration of the case and the law on the point, confirmed the conviction recorded by the Trial Court. However, on the question of sentence, the learned Sessions Judge was of the view that the sentence of six months'' rigorous imprisonment was liable to be set aside whereas the fine of Rs. 3,000/- was enhanced to Rs. 6,000/-, out of which an amount or Rs. 3,000/- was directed to be paid to the complainant-wife. It is against this order that the present Criminal Revision Application has been filed by the wife who has contended that the modification of the sentence passed by the Trial Court in Appeal was not only legally erroneous but that it results in gross miscarriage of justice. The corollary to this submission is that the Respondent husband should be awarded the maximum sentence permissible having regard to the gravity of the present case.

4. The point at issue before us is relatively narrow. We are faced with a concurrent finding of conviction recorded by both the Trial Court and of the Appeal Court. Mrs. Madhuri Chitnis, the Petitioner appearing in person, has very strongly urged interference with the Appellate Order principally on the ground that the degree of leniency shown to the Accused cannot pass the test of judicial scrutiny. Mrs. Chitnis has relied on the decision of the Supreme Court in the case of State of Karnataka Vs. Krishna alias Raju, , wherein the Supreme Court, while dealing with a motor accident case in which an extremely nominal fine was imposed on the Accused, disapproved of the judgment of the Karnataka High Court which had refused to interfere with the sentence on the ground that the long pendency of the Appeal had caused enough

mental agony to the Accused. The Supreme Court in that case enhanced the sentence in question. Characterising the punishment as unconscionably lenient or ''flea-bite'' sentence, the Supreme Court observed that consideration of undue sympathy in such cases will lead to miscarriage of justice and undermine confidence of the public in the efficacy of the criminal judicial system. Mrs. Chitnis also drew our attention to yet another decision of the Supreme Court in the case of Mahesh and Others Vs. State of Madhya Pradesh, , wherein the Supreme Court, while refusing to interfere with a death sentence, observed (at page 1074 of Cri LJ) :-

"It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

5. Mrs. Chitnis has also drawn our attention to the decision of the Kerala High Court in the case of Raman and Another Vs. Francis and Others, , wherein the Court was dealing with a sentence of imprisonment till rising of the Court and observed as follows (at page 1362) :-

"Inadequate sentences can do harm to the system. Law must meet the challenges that criminalisation offers. Maudlin sentiments, bordering on tottering weakness cannot masquerade or reformative sentiments cannot do service for a rational sentence system. Misconceived liberalism cannot be countenanced."

6. Dealing with the concept of corrective jurisprudence, Roscoe Pound had observed that "Law regulates social interests, arbitrates conflicting interests, claims and demands. Criminal law reflects the wishes of interest groups." Friend man (Law in Changing Society) observed that, "State of Criminal law continues to be - as it should be - a decisive reflection of social consciousness of a society." Jerome Hall (Studies in Jurisprudence and Criminal Theory) states that, "Security of person and property of all citizens is an essential requisite of good Government, and this can be achieved through the instrumentality of criminal law."

7. It is true that the corrective machinery makes itself felt through its sentencing process, by deft modulation of sentences, stern where it should be, and tempered with mercy where it warrants to be. This is an area where precise scales or evaluation standards are not available. A computerised situation cannot be thought of. Changing vicissitudes have reigned the sentencing scene. From a draconian sentencing process which led to the hanging of a 9 year old girl in the 16th century, extreme attitudes of reformation and curative process had gained currency. As Jack Gibbs in "Crime, Punishment and Deterrence" stated, "Any legal theory of behaviour must assume that people by and large do not want to be punished and will act so as to avoid fines, jail, whipping or electric chair. That means a threat of real punishment will deter."

8. The classical school of criminology was based on hedonistic psychology. Man governs his behaviour by considerations of pleasure and pain. John Spenser said (White Collar Crime), "Algebraic sum of pleasure and pain must be balanced." Undoubtedly, there is a cross cultural conflict, where living law must find answers to new challenges and Courts are required to evolve new heads of public policy. Viscount Simonds highlighted the imperatives and identified new heads of public policy in what is known as the Lady''s Directory Case (1961) 2 All England Reports 446, Shaw v. D.P.P., wherein it was observed that "Reformative and curative jurisprudence have been found to be not entirely responsive. Deterrence is surely a component of the sentencing system." In the words of E. A. Ross (Social Control) :

"If one rascal out of 20 men might aggress at will, the higher forms of control would break down. Man after man would be detached from the honest majority. This deadly contagion of lawlessness would spread till social order lay in ruins. Law therefore is still the corner-stone of the edifice of order."

There appears to be further support from several other learned Authors who explain the view that deterrence must form part of the sentencing process. In the words of Parker, C.J., "protection of society and stamping out of criminal adventure must be the object of law and this must be achieved through a proper sentencing policy. The same view was voiced by Butler, J. of the U.S. Supreme Court in Nice v. Minnesota 283 US 697, wherein it was observed :-

"Society could not long endure under such threats. If the courts did not protect the injured, the injured parties would then resort to private vengeance."

There can be little doubt, therefore, that overzealous judicial dispensation can invite ridicule. Our Supreme Court, in the case of State of Punjab Vs. Mann Singh and Another, , has observed :

"It is the duty of the court in every case to award proper sentence having regard to the nature of the offence, and the manner in which it was committed."

The Division Bench of our High Court in the case of The State Vs. Pritamdas Khatumal Mancharamani,

"If it appears to the Court that the sentence imposed on the accused is grossly inadequate having regard to the gravity of the offence, it will not hesitate to impose an adequate sentence on the accused even though the effect of its order will be to send the accused back to jail once more."

9. Lastly, Mrs. Chitnis has drawn our attention to a reported decision in her earlier case reported in Smt. Madhuri Mukund Chitnis Vs. Mukund Martand Chitnis and another, , wherein I. G. Shah, J., while dealing with S. 500 of the Indian Penal Code against the Respondent-husband, has observed that having regard to the wanton allegations, a lenient view cannot be taken. Setting aside the order of acquittal, the High Court imposed a fine and a jail sentence in both the appeals. There can be little

doubt regarding the proposition that inadequacy of sentence in serious cases is wholly unjustified and impermissible. The punishment awarded to the husband by the Appeal Court does, under these circumstances, require reconsideration by this Court, particularly since there is little dispute as regards the facts on record.

10. We are concerned with a charge under S. 498-A of the Indian Penal Code. This Section was newly introduced in the Code for purposes of punishing the husband or relatives of the husband who subjected a wife to cruelty. The term "cruelty" has been defined as any wilful conduct which is of such a nature as to drive a wife to suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman and also includes cases of harassment. Though the amendment to the Code is of recent origin, by virtue of Section 113-A of the Evidence Act, it also takes into account acts committed prior to December 25, 1983 when the amendment took place, if the incidents relate to an earlier period of seven years during which the marriage was subsisting. Tated, J., in the decision reported in (1989) 1 Crim 498 (Criminal Writ Petition No. 613 of 1986) between these same parties, had observed that, prima facie, the making of false allegations for purposes of harassing a wife through criminal proceedings would constitute an offence under S. 498A of the Indian Penal Code. Though the conviction in the present case is not seriously in dispute, the point that engages our attention is another dimension of S. 498-A, namely, the complaint of Mrs. Chitnis that she was subjected to a series of malicious and vexatious litigations in which extremely hurtful and offensive accusations were levelled against her out of a sense of vindictiveness and wherein she was humiliated and tortured through the execution of search warrants and seizure of personal property. It is her submission that these facts make out a clear case of cruelty and harassment which are punishable u/s 498-A of the Indian Penal Code; though these acts are far removed from the more traditional forms of cruelty and the more common ones that are the subject-matter of matrimonial proceedings. This submission of Mrs. Chitnis will have to be upheld in so far as the present record, undoubtedly, indicates that the charges made against the present Petitioner by the husband and the criminal proceedings instituted by him and the vigour with which these were repeated and carried on, constituted cruelty of an intense degree. It is the horrifying number of atrocities committed in the name of dowry and unfortunate number of wife-burning incidents that brought S. 498-A of the Indian Penal Code on the statute book. The Section, however, is specially worded in order to encompass even this class of cruelty committed through the litigative process.

11. Mr. Shah, the learned Advocate appearing on behalf of the Respondent-husband, has pointed out that the parties were married in the year 1983; that the marriage was short-lived and that the parties have been divorced a long time back. He has further pointed out that, undoubtedly, there has been furious litigation in which the allegations and the institution of proceedings has not been one-sided. He submits that Mrs. Chitnis has not only prosecuted but has

persecuted his client and that the charges made by her which are the subject-matter of the present prosecution are virtually overlapping in so far as they are also the subject-matter of the defamation proceedings for which the Accused husband has already been convicted. He, therefore, submits that the Appeal Court was fully justified in having taken a balanced view of the matter and in having set aside the jail sentence while enhancing the fine which would meet the ends of justice. Mr. Shah submits that the Petitioner still feels very strongly about what had happened and that, consequently, she is still crying for vengeance but that a Court must take into account the fact that both the parties have suffered as much in this long-drawn-out skirmish. The Respondent-husband is working as an Executive with a Company and a jail sentence would virtually ruin him, whereas a heavy fine as imposed by the Appeal Court would serve the ends of justice by adequately punishing him.

12. Section 498-A was grafted on to the Indian Penal Code specifically to deal firmly and effectively with all cases of cruelty and harassment to women. If the law is to be meaningfully applied in the light of the principles that emerge from the earlier discussion in this judgment, the punishment awarded must be in consonance with the gravity of the offence proved. There is no compulsion that a jail sentence must be awarded and it is for this reason that the option of awarding either a jail sentence or a fine or both is left to the discretion of the Court. If it appears to the Court on an overall view of the case that a jail sentence would serve the ends of justice, such a punishment would be in order. While awarding the punishment, the consequences of such punishment and the point of time when it is awarded are relevant. If it appears to the Court that a heavy fine would be more in consonance with the facts of the case, like for instance where the wife has complained that she has suffered gravely, it may be some form of retribution to direct the husband to compensate her monetarily. On the facts of the present case, where the Trial Court had exercised judicial discretion and awarded a sentence of six months'' rigorous imprisonment, that Court had indicated the measure of punishment that the present offence deserves. We are of the view that the learned Sessions Judge was perhaps justified in taking into consideration the age, the occupation and family conditions of the Respondent-husband who would have been completely ruined if he were to be jailed for a period of six months. While substituting that sentence by a fine, the learned Sessions Judge ought not to have awarded a modest fine. In our view, the least that the learned Sessions Judge ought to have done was to have equated the six months'' earnings of the Accused with the sentence of imprisonment that was being set aside and in this view of the matter, to our mind, the fine imposed on the Accused ought to have been enhanced to Rs. 30,000/-. In our view, the facts of the case are sufficiently serious to warrant the imposition of this fine, and the order of the learned Sessions Judge shall stand modified accordingly.

13. Mr. Shah, on behalf of the Respondent-husband, has drawn our attention to the Affidavit dated 27-9-1990 that has been filed by the Respondent-husband and has strongly urged this Court to reduce the quantum of fine. He has pointed out that the Accused has virtually been ruined in the course of the litigations instituted by the Petitioner in the course of the last few years and that he has also had to pay Rs. 17,000/- against the earlier fine imposed on him. He has pointed out the mental agony undergone by his client in the course of the last seven years and the fact that some proceedings are still pending before the Supreme Court. It is precisely on a consideration of these factors that we have declined to impose a jail sentence on the Accused, but, in our view, if the law is to be firmly and meaningfully applied, it will have to be done with a measure of strictness.

14. The Criminal Revision Application is accordingly allowed. The judgment and order of the Sessions Court dated 20-2-1990 is modified to the extent that the fine imposed on the Accused is enhanced to Rs. 30,000/- in default the Accused to suffer six months'' rigorous imprisonment. Out of the fine, if recovered, the whole of the amount is directed to be paid to the Petitioner-wife. Having regard to the special circumstances pleaded by Mr. Shah, the Accused is granted a period of three months within which to pay the fine imposed. The Rule is made absolute accordingly.

15. Order accordingly.