
(2018) 04 PAT CK 0071

Patna High Court

Case No: Criminal Miscellaneous No.29281 of 2015

Kartikey Kumar & Anr

APPELLANT

Vs

State Of Bihar & Anr

RESPONDENT

Date of Decision: April 11, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 482
- Indian Penal Code (IPC) 1860 - Section 304B, 323, 498A

Citation: (2018) 3 PLJR 158

Hon'ble Judges: Rajendra Menon

Bench: Single Bench

Advocate: Kumar Ravish, Tuhin Shankar, Gopal Kumar, Jharkhandi Upadhyay

Final Decision: Allowed

Judgement

1. In this application filed under Section 482 Cr.P.C., applicants herein, who are the husband and wife, seek quashing of an order dated 25.03.2014

passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2578(C)/2013 [Jyotsna Prabha Sinha Vs. Vijay Lal and others].

Cognizance for an offence under Section 498A read with Section 323 I.P.C. having been taken against the present applicants along with other co-

accused persons, this application by the present applicants who are Accused Nos. 7 and 8 before the trial court.

2. Facts in brief go to show that the complainant Smt. Jyotsna Prabha Sinha was married to co-accused and Accused No. 1 in the complaint case Sri

Vijay Lal. It is the case of the complainant that Vijay Lal and other family members who have been arrayed as Accused Nos. 2 to 6 were demanding

dowry, harassing her and, therefore, the complaint was filed. As far as the present applicants are concerned, they are alleged to be friends of the

complainant's husband. It is said that Applicant No. 1 herein Kartikey Kumar is the friend of Vijay Lal and Petitioner No. 2 is wife of Petitioner

No. 1. They had been instrumental in arranging the marriage. List of gifts and dowry items were exchanged in their presence and allegations are

made against them to say that when the other family members who were demanding dowry they also participated in supporting the aforesaid

demands. It is not necessary to go into details of the allegation made against the present applicants as the only legal question involved in this case is

with regard to applicability of the provisions of Section 498A I.P.C. as far as the present applicants are concerned. That apart, on a complete scanning

of the complaint, which is filed as Annexure-1, it is seen that the present applicants are alleged to have instrumental in getting the marriage fixed and it

is alleged that they have also, along with the complainant's husband and family members, demanded dowry and caused harassment to her.

3. Learned counsel for the applicants invited attention to the provisions of Section 498A I.P.C. and argued that an offence under Section 498A

I.P.C. can be committed only by a person who happens to be the husband of the complainant or the relative of the husband. It is argued that so long

as the relationship between the complainant and the accused does not fall in this category of being a husband or a relative of the husband, no

prosecution under Section 498A I.P.C. is permissible. Learned counsel invited attention to the following judgments in support of the aforesaid

contentions:-

(1). U. Suvetha Vs. State by Inspector of Police and another- (2009) 6 SCC 757

(2). Sunita Jha Vs. State of Jharkhand & Anr.- (2010) 10 SCC 190

(3). State of Punjab Vs. Gurmit Singh (2014) 3 PLJR Supreme Court 321

4. He also referred to various judgments of other High Courts on this count, namely, an order passed by a Bench of this Court in Cr. Misc. No. 30047

of 2013 on 28.07.2014 (Shambhu Kumar @ Shambhu Mahto & Anr. Vs. State of Bihar & Anr.), a judgment of the Madhya Pradesh High Court

(Indore Bench) in Cr. Revision No. 3228 of 2017 (Bhagwan Vs. The State of Madhya Pradesh) decided on 21.11.2017, another judgment of the

Madhya Pradesh High Court in the case of Ruchi Jain Vs. The State of Madhya Pradesh (M.Cr.C.No. 8293/2012) decided on 29.08.2013, a judgment

of the Jharkhand High Court in the case of Sumona Mukherjee @ Sumana Mukherji & Anr. Vs. The State of Jharkhand & Anr.- 2012

(3) JLR 220 and finally an order of the Punjab and Haryana High Court in Cr. Misc. No. M-13946 of 2009 (Darbara Singh Vs. State of Punjab and

another decided on 22.11.2009 to say that so long as the accused is not the husband or relative of the husband of a woman who is subjected to cruelty

or harassment a complaint under Section 498A I.P.C. is not maintainable. Learned counsel further argued that if the entire complaint is analyzed, no

offence under Section 323 I.P.C. against the present applicants is made out and, accordingly, placing reliance on the law laid down by the Supreme

Court in the case of State of Haryana and others Vs. Bhajan Lal and others- 1992 Supp (1) SCC 335 it was argued that it is a fit case where in

exercise of the powers under Section 482 Cr.P.C., to do justice to the applicants and to prevent them from being unnecessarily involved in the litigation

in question, the application should be allowed and the entire prosecution quashed.

5. Refuting the aforesaid contention learned counsel for the respondent argued that the meaning of the word "relative", as is used in Section 498A

I.P.C. or Section 304B I.P.C., should require liberal interpretation. It should be interpreted in such a manner that the intention of the legislature is fully

given effect to and any meaning or interpretation which has the effect of nullifying the legislative intent should be avoided. Learned counsel invites out

attention to a judgment of the Supreme Court in the case of Reema Aggarwal Vs. Anupam and others- (2004) 3 SCC 199 and argues that the

judgment relied upon by the applicants in the case of Sunita Jha (supra) will not apply and by adopting a liberal interpretation to the meaning of the

word "relative", as used in Section 498A I.P.C., conviction has been ordered of the accused in the said case i.e. Reema Aggarwal (supra) and,

therefore, learned counsel argues that the contention of the petitioners cannot be accepted.

6. I have heard learned counsel for the parties at length and have perused the record and have gone through, in detail, the judgments relied upon by

learned counsel for the parties.

7. Before advertent to consider the question involved, it would be appropriate to consider the nature of complaint made and the provisions of Section 498A I.P.C. A copy of the complaint has been filed as Annexure-1 and a perusal of the complaint goes to show that primarily allegations of demand of dowry and harassment is made by the complainant against her husband Sri Vijay Lal and his family members. It is also an admitted position that the applicants herein, namely, Kartikey Kumar and his wife Sanyukta Sinha are residents staying in New Delhi. They are not members of the complainant's family. They are not related to her husband Vijay Lal. On the contrary, Applicant No. 1 is a close friend of Vijay Lal and Applicant No. 2 is his wife. It is alleged in the complaint in Paragraph 4 that Petitioner No. 1 was instrumental in arranging the marriage. The bride and the bridegroom met in the presence of the Petitioner No. 1. The ring ceremony, exchange of list of gifts and, items termed as dowry, took place in the presence of the present applicants and at certain instance when demands were made for dowry or money the applicants were also present. Accordingly, it is said that the ingredients for demand of dowry and harassment are made out.

8. As far as offence under Section 323 I.P.C. is concerned, there is no whisper or iota of any allegation against the present applicants which would constitute an offence under Section 323 I.P.C.

9. At this stage, it would be appropriate to take note of the provisions of Section 498A I.P.C. The said provision reads as under:-

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 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 of by her or any person related to her to meet such demand.” (emphasis supplied)

10. A perusal of the aforesaid provision would clearly show that whoever being a husband or a relative of the husband, subjects a woman to cruelty

shall be punished with imprisonment which may extend to three years or fine or both. The persons, according to this provision, who can be held liable

for prosecution for an offence under Section 498A I.P.C., have to be the husband or the relative of the husband and nobody else. Admittedly, the

applicants herein are neither the husband nor relative of the husband. That being so, the question would be as to whether they can be held responsible

for committing an offence under Section 498A I.P.C. and whether they can be held responsible for committing such an offence.

11. Learned counsel for the complainant had placed reliance on the judgment of Rema Aggarwal (supra) to canvass a contention that while construing

the provisions of Section 498A I.P.C., the expression used therein should be construed liberally so as to give full effect to the purpose for which

Section 498A I.P.C. was brought into the statute book.

12. If we analyze the judgment in the case of Rema Aggarwal (supra), we find that in the said case the question was as to whether the accused

would fall within the definition of “husband” as used in Section 498A I.P.C., as it was found that the complainant therein Rema Aggarwal was not

married to the accused person, it was not a valid marriage as she was staying with him when the first wife of the accused was alive and there was no

dissolution of the marriage with the first wife. The question was as to whether a person who keeps a woman with him, treats her like his wife even

though without conducting a marriage can fall within the definition of husband for prosecution under Section 498A I.P.C. It is in the backdrop of the

aforesaid factual aspect of the matter that the judgment in question was rendered in the case of Reema Aggarwal (supra) and the principle was that

Section 498A I.P.C. should be given liberal interpretation so that the principle of purposive construction and mischief rule are given effect to. In the

said case of Reema Aggarwal, import and meaning of the word “relative” appearing in Section 498A I.P.C. has not at all been considered. On

the contrary in the case of U. Suvetha (supra) apart from the fact that the judgment rendered in the case of Reema Aggarwal (supra) was considered

the meaning of the word "relative" as appearing in Section 498A I.P.C. was taken note of, the principle of law laid down in the case of Reema

Aggarwal is discussed and thereafter in Paragraph 9, 10 it has been held that the word "relative" must be assigned the meaning as it is commonly

understood and the principles of strict interpretation has to be made applicable while interpreting a penal provision. In fact the principle discussed in

Paragraphs 9 and 10 reads as under:-

Â ¶9. The word "cruelty" having been defined in terms of the aforesaid Explanation, no other meaning can be attributed thereto. Living with

another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in

our opinion, would not attract the wrath of Section 498-A of the Penal Code. An Offence in terms of the said provision is committed by the persons

specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to

cruelty within the aforementioned provision. If the appellant had not (sic) been instigating the husband of the first informant to torture her, as has been

noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant

may be held guilty for abetment of commission of such an offence but not an offence under Section 498-A of the Penal Code.

10. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would

include father, mother, husband or wife, son daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of

any person. The meaning of the word "relative" would depend upon the nature of the statue. It principally includes a person related by blood,

marriage or adoption."

13. Thereafter, meaning of the word "relative" appearing in various dictionaries have been taken note of and it has been held that the word

"relative" would ordinarily mean father, mother, husband or wife, son, daughter, brother, sister, nephew, niece, grandson etc. It primarily includes

a person related by blood, marriage or adoption and not a friend or any other person. This judgment in the case of U. Suvetha has been again

considered in the case of Sunita Jha (supra) and it has been held that the provisions of Section 498A is clear and unambiguous and after taking note of

the law laid down in the case of U. Suvetha (supra), the principle therein has been affirmed. Again, in the case of Gurmit Singh (supra) the judgment

in the case of U. Suvetha is considered, another judgment of the Supreme Court wherein the expression "relative" has been used i.e. in the case

of Vijeta Gajra Vs. State of NCT of Delhi- (2010) 11 SCC 618 is taken note of and in Paragraph 9 the principle has been crystallized in the

following manner:-

Â 9. There was a reference made in this application by the appellant for quashing the summons arising out of the complaint dated 15-4-2008 and

also to Criminal Miscellaneous Petition No. 2153 of 2008. The High Court had passed the order disposing of it since the State's Counsel had

agreed to provide copy of the complaint and had further stated that in the event the FIR was registered, the applicant would be informed of this fact

and no coercive action would be taken against her till then. In her application there was a statement that she did not even belong to the family of the

complainant, her husband or any of their relatives and that all the allegations were palpably false. It was then stated that the writ petition was filed

which came to be disposed of by the High Court. It seems that the complainant sought the direction to implead herself in the writ petition-cum-Section

482 CrPC application filed by the appellant.

14. From the aforesaid legal principles it is very clear that a relative has to be either by virtue of blood relationship or a relationship that arises on

account of marriage or adoption and not otherwise. In this case, the relationship between Vijay Lal husband of the complainant and the present

applicants is neither by virtue of any blood relation nor by marriage or adoption. On the contrary, their relationship is a friendly relationship and they do

not fall in the category of relative, as laid down in the judgments indicated hereinabove. This principle has been followed by various High Courts in the

judgments cited before us i.e. by this Court, Jharkhand High Court, Madhya Pradesh High Court and the Punjab and Haryana High Court.

15. During the course of hearing, a judgment of the Gujarat High Court in Cr. Misc. Application No. 468 of 2010 (Leenaben Virendrabhai Verma Vs.

State of Gujarat & 1) was brought to our notice to say that in view of this judgment the application is liable to be dismissed.

16. We, with due respect to the Bench, would like to differ from the aforesaid judgment for the simple reason that in this judgment none of the

judgments of the Supreme Court, as is detailed hereinabove, are taken note of or interpreted. On the contrary, the said judgment deals with certain

extra marital relationship and the fact as to whether the accused therein was having the relationship of husband of the complainant and we are of the

view that in the light of the law laid down by the Supreme Court the said judgment may not be made applicable.

17. In view of the discussions made above and also in the light of the judgments of the Supreme Court, as detailed hereinabove, we allow this

application and quash the entire proceedings of Complaint Case No. 2578(C)/2013.