

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Revision No. 49 of 2010
Decided on: April 11, 2017

Ramesh ChandPetitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹? Yes.

For the petitioner: Mr. Vinay Thakur, Advocate.

For the respondent: Mr. Ramesh Thakur, Deputy Advocate
General.

Sandeep Sharma, J. (Oral)

Instant criminal revision petition is directed against judgment dated 9.12.2009 passed by the learned Sessions Judge, Sirmaur at Nahan, in Cr. Appeal No. 08-Cr.A/10 of 2006, affirming judgment and order of conviction dated 16.2.2006/17.2.2006 passed by the Additional Chief Judicial Magistrate, Rajgarh, District Sirmaur, Himachal Pradesh in Cr. Case No. 22/2 of 2005, whereby the learned trial Court while holding petitioner guilty of having committed offence punishable under Section 498A IPC, convicted and sentenced him to undergo simple imprisonment, for a period of six months and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo simple imprisonment for two months.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

2. Briefly stated the facts as emerge from the record are that the complainant, namely Promila Devi, who happened to be wife of the petitioner Ramesh Chand, lodged an FIR i.e. Ext. PW-1/A in the Police Station, stating therein that her marriage was solemnized with petitioner on 23.6.2004 according to Hindu rites and ceremonies and local customs. After two months of marriage, in the month of August, 2004, petitioner and other accused persons i.e. father-in-law, mother-in-law and sister-in-law of the complainant, started maltreating her. She further stated that she kept on tolerating the atrocities of the petitioner so that family does not break. She also complained that she was not provided with clothes and shoes to wear and whenever she asked her husband for such things, he did not behave properly. Complainant further reported to the police that petitioner repeatedly teased her that she had not brought any money at the time of her marriage and she replied that since her parents are poor, she was not able to give them anything. Complainant further reported that whenever, accused accompanied her to her parents' house in village Dhali Dibber, Tehsil Rajgarh, he did not stay with her, rather visited other ladies in the village. She further alleged that with the passage of time, petitioner started proclaiming that he would not keep her at his house. His beatings increased with the passage of time. Finally, after becoming totally helpless, she narrated entire facts to her parents and sister, who repeatedly counseled petitioner to behave properly with the complainant but to no avail. Complainant specifically complained that

her mother-in-law, father-in-law and sister-in-law, also misbehaved with her and she was not provided meals etc. As per complainant, she became pregnant but despite that petitioner kept on committing atrocities upon her and finally in August, 2004, she with her two months old pregnancy, was left in the house of her parents, by the mother-in-law, Smt. Kaulan Devi. Complainant while lodging report on 9.4.2015, also proclaimed that she was pregnant for the last nine months and during this period, nobody from her in-laws bothered to maintain her and as such sought action against her in-laws including her husband, in terms of Section 498A IPC.

3. Subsequently, on the basis of investigation carried out by the police, pursuant to registration of FIR, as referred above, and on the conclusion thereof, police presented challan in the competent court of law. Learned trial Court being satisfied that prima facie case exists against petitioner, proceeded to frame charge under Section 498A IPC against the petitioner as well as other family members of the petitioner, to which they pleaded not guilty and claimed trial. Accused also got recorded their statements under Section 313 CrPC, wherein they denied the case of the prosecution in toto. However, the fact remains that the learned trial Court below, on the basis of material adduced on record by the prosecution held petitioner guilty of having committed offence punishable under Section 498A IPC and acquitted other co-accused.

4. Being aggrieved with the aforesaid judgment passed by learned trial Court, petitioner preferred an appeal before the learned Sessions Judge, Sirmaur at Nahan, who also dismissed the same while upholding the judgment of conviction passed by learned trial Court. Hence, this petition by the petitioner praying therein for his acquittal after setting aside judgments of conviction passed by the learned Courts below.

5. Mr. Vinay Thakur, learned counsel representing the petitioner, vehemently argued that impugned judgments of conviction recorded by the Courts below are not sustainable as the same are not based upon correct appreciation of evidence adduced on record by the respective parties, hence deserve to be set aside. Mr. Thakur, while inviting attention of this Court to the impugned judgments passed by the learned Courts below, strenuously argued that bare perusal of same suggests that the courts below have not appreciated evidence in its right perspective, as a result of which, erroneous findings have come on record to the detriment of the petitioner, who is an innocent person. Mr. Vinay Thakur specifically invited attention of this Court to Section 498A IPC, to state that cruelty, if any, was required to be proved by the prosecution within the ambit of explanation as provided to Section 498A IPC, but in the instant case, bare perusal of evidence available on record nowhere suggests that prosecution was able to prove beyond reasonable doubt that cruelty, if any, was meted out to the

complainant by the petitioner, as defined under Section 498A IPC, and, as such, no conviction, if any, could be recorded by the learned Courts below. Mr. Thakur, while advancing arguments fairly conceded that though defence was taken by the petitioner that complainant was not his legally wedded wife, but it stands duly proved on record that complainant is/was legally wedded wife of the petitioner and as such that aspect of the matter need not be looked into by this Court.

6. While concluding his arguments, Mr. Thakur made this Court to travel through the evidence adduced on record by the prosecution to demonstrate that there is no iota of evidence suggestive of the fact that complainant was maltreated and dowry, if any, was ever demanded, which could compel her to cause grave injury or danger to her life. Mr. Vinay Thakur, also contended that approach adopted by the learned Courts below also can not be accepted because, on the same set of evidence, other co-accused have been acquitted whereas, petitioner has been held guilty of having committed offence punishable under Section 498A IPC, as such judgments passed by learned Courts below deserve to be set aside. Mr. Vinay Thakur, also stated that both the learned Courts below failed to take note of the fact that as per own statement of the complainant, she had left house of petitioner in the month of August, 2004, whereas, FIR in question was lodged in the month of April, 2005 i.e. approximately after nine months of leaving the house by the complainant. Mr. Thakur, further contended that there is

no explanation worth the name that why complainant kept mum for nearly nine months, if cruelty, if any, was meted to her by the petitioner and his family members. ◊

7. Mr. Ramesh Thakur, Deputy Advocate General, supported the impugned judgments passed by the courts below. Mr. Ramesh Thakur vehemently argued that bare perusal of the impugned judgments of conviction recorded by courts below suggests that same are based upon correct appreciation of evidence adduced on record by the respective parties and there is no scope of interference by his Court, especially in view of the concurrent findings of fact and law recoded by the courts below. Mr. Thakur, with a view to refute aforesaid contentions having been made by the learned counsel representing the petitioner, also invited attention of this Court to the judgments passed by the courts below to demonstrate that each and every aspect of the matter has been dealt with meticulously by the Courts below while holding petitioner guilty of having committed offence punishable under Section 498-A IPC and as such there is no illegality or infirmity in the impugned judgments and same deserve to be upheld. While concluding his arguments,

8. Mr. Ramesh Thakur, Deputy Advocate General, reminded this Court of its limited jurisdiction under Section 397 as far as re-appreciation of evidence is concerned. He has placed reliance upon the judgment passed by Hon'ble Apex Court in case **State of Kerala versus**

Puttumana Illath Jathavedan Namboodiri (1999)2 Supreme Court

Cases 452, wherein it has been held as under:-

“ In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

9. I have heard learned counsel representing the parties and have carefully gone through the record made available.

10. True, it is that while exercising the power under Section 397 of Criminal Procedure Code, this Court has very limited power to re-appreciate the evidence available on record. But in the present case, where accused has been convicted and sentenced under Sections 498-A IPC, this Court solely with a view to ascertain that the judgments passed by both the Courts below are not perverse and the same are based upon correct appreciation of evidence available on record, undertook an exercise to critically examine the evidence available on record to reach fair and just decision in the case.

11. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in **Krishnan and another Versus Krishnaveni and**

another, (1997) 4 Supreme Court Case 241; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality or sentence or order. The relevant para of the judgment is reproduced as under:-

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order.”

12. While hearing arguments having been made by the learned counsel representing the parties, this Court had occasion to peruse records of the courts below, perusal whereof certainly compels this Court to agree with the arguments having been made by the learned counsel representing the petitioner that there was no occasion for the Courts below to hold the petitioner guilty on the same set of evidence, on the basis of which other co-accused were acquitted, because, bare perusal of evidence led on record by the prosecution suggests that allegations of cruelty, if any were not specifically against petitioner and

there was no specific allegation of cruelty as provided under Section 498 IPC against the petitioner, which could compel the Courts below to record conviction under Section 498-A IPC against petitioner. Since, there is no dispute, if any, with regard to the factum of marriage inter se complainant and petitioner, this Court, need not look into that aspect, as agreed by the learned counsel representing the petitioner also. This Court, solely with a view to find answer to the arguments having been made by the learned counsel representing the petitioner, carefully perused Section 498-A IPC, perusal whereof certainly suggests that 'cruelty', if any, is to be construed strictly in terms of explanation given to aforesaid Section. At this stage, it may be profitable to reproduce Section 498A IPC 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 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.]."

13. Perusal of aforesaid provision of law, clearly suggest that if husband or relatives of the husband of woman subject(s) such woman to cruelty, would be liable to be punished with imprisonment for a term, which may exceed to 3 years. For the purpose of this Section, 'cruelty' has been specifically defined. Hence, Courts below, while adjudicating whether any cruelty is/was metered out to the

complainant, were bound to ascertain the question with regard to “cruelty”, if any, within parameters as provided in the definition of ‘cruelty’ under Section 498-A IPC. This Court, after carefully examining the evidence led on record by prosecution, sees substantial force in the arguments having been made by the learned counsel representing the petitioner that the prosecution was unable to prove on record that complainant was meted cruelty as defined under Section 498A IPC and as such no conviction, if any, could be recorded against the petitioner under Section 498A IPC. This Court, after carefully examining evidence is also of the view that complainant made general allegations and there is no specific allegation, if any, of demand of dowry either by the petitioner or by his family members. There is nothing in the statement of the complainant suggestive of the fact that demand was ever made by petitioner or his family members, directly or indirectly, from the complainant or from her parents, rather, complainant herself stated that when she asked for maintenance from her husband, petitioner told her that she had not brought anything from her house. Complainant has also stated that since her parents were poor, she had not brought anything. But definitely, she stated nothing with regard to demand of dowry made by the petitioner or family members of the accused. Similarly, there is nothing in the statement of the complainant as well as other material prosecution witnesses suggestive of the fact that conduct, if any, of the petitioner caused stress, if any,

to the complainant, which could drive the complainant to either to commit suicide or cause grave injury.

14. Interestingly, apart from above, there is no explanation worth the name on record that what prevented the complainant from making complaint either to the police or Gram Panchayat from August, 2004 to 9.4.2005, which inaction on the part of the complainant certainly compels this Court to draw an adverse inference against the complainant, who, admittedly, kept mum for approximately for nine months. If she was actually maltreated or meted cruelty, strictly in terms of explanations (a) and (b) to Section 498A IPC, she would have lodged complaint with the Gram Panchayat or to the police immediately in the month of August, 2004 but, neither complainant nor her family members with whom she admittedly started living in August, 2004, bothered to lodge complaint against petitioner as well as his family members.

15. In the instant case, this Court was unable to lay its hand on any evidence, be it ocular or documentary, suggestive of the fact that petitioner had ever proclaimed publically or teased the complainant that she was not his legally wedded wife and similarly, this Court was unable to see any evidence on record that the petitioner ever proclaimed publically that he was not the father of the child born to the complainant. Careful perusal of complaint submitted by the complainant to the police praying therein for initiating action against petitioner and his family members, under Section 498-A IPC, also

nowhere discloses aforesaid allegations, as such, it is not understood how the first appellate Court came to the conclusion that denial of marriage as well as pregnancy of complainant amounts to 'cruelty' punishable under Section 498A IPC. At the cost of repetition, it may be stated that there is/was no allegation as such, made by the complainant rather, allegations, if any, were of misbehaviour by the petitioner and his family members. Though complainant made an attempt to state before police that she was given repeated beatings but, unfortunately, there is no evidence available on record to support the contention, if any, with regard to beatings.

16. This Court, after carefully examining the record is of the view that the petitioner solely with a view to defend himself in the proceedings under Section 498A IPC, initiated at the behest of the complainant, took the defence, whereby he claimed that complainant was not his legally wedded wife but, certainly, aforesaid defence taken by the petitioner before the court below in the proceedings under Section 498A IPC nowhere amounts to 'cruelty', as defined under Section 498A IPC. Had the complainant alleged in the complaint and stated before the Court that petitioner proclaimed publically that the complainant was not his legally wedded wife and had the petitioner disputed paternity of the child born to the complainant, Courts below would have been right in concluding that complainant successfully proved 'cruelty' in terms of Section 498-A IPC.

17. Further, there are no specific allegations against petitioner and all the allegations, if any, are/were against the whole of the family, that too general and vague. Hence, once the courts below acquitted other accused on same set of evidence, conviction of petitioner is also not sustainable.

18. Their lordships of Supreme Court in **Raj Rani v. State (Delhi Admn.)** reported in AIR 2000 SC 3559 have held that it is not enough that the deceased felt those words hurting. It must be subjected to judicial scrutiny and the Court must be in a position to hold that those words were sufficiently hurting enough as to amount to 'cruelty' falling within the parameters fixed in S. 498-A of the Indian Penal Code. Their lordships have held as under:

“3. Both sides submitted that the only reliable evidence which can be looked into is the suicide note left behind by Veena which should have been scribed by her on 17-4-1984, the date of the commission of suicide.

4. We have gone through the entire writings contained in the suicide note. It makes a serious castigation against her husband for being an addict to narcotic drugs. Then she made a general allegation against her mother-in-law and in a lesser degree towards the appellant. But unfortunately she did not advert to any concrete instance which can be termed as cruelty as defined in Section 498A of the Indian Penal Code. The utterances said to have been made by the appellant towards the deceased were to her chagrin and she had taken them very seriously in the suicide note she described such utterances as not worthy of reproduction.

5. It is not enough that the deceased felt those words hurting, it must be subjected to judicial scrutiny and the Court must be in a position to hold that those words were sufficiently hurting enough as to amount to "cruelty" falling within the parameters fixed in Section 498A of the Indian Penal Code. The area remains grey and vague. Not a single word said to have been spoken to by the appellant as against the deceased had been put on record by the deceased in the suicide note in spite of the fact

that the said note is a very lengthy letter running into several paragraphs. The tenor and language of the suicide note would reflect that she was not an illiterate lady. As the Court is rendered helpless to judge whether the words which deceased heard from the appellant would amount to cruelty, it is far from possibility for the Criminal Court to hold that she is guilty of the offence of cruelty as envisaged in the section. It is also to be pointed out that the deceased did not mention a single deed which the appellant would have done against her. All that is said against the appellant were that she spoke same thing which she took objectionable.”

19. Their lordships of Hon'ble Apex Court in **Girdhar Shankar Tawade v. State of Maharashtra** reported in AIR 2002 SC 2078, have held that in the absence of cogent evidence to bring home charge under S. 498-A, accused was entitled to be acquitted. Their lordships have held as under:

“16. We have already noted Section 498-A herein before in this judgment and as such we need not delve upon the same in greater detail herein excepting recording that the same stands attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial Court as regards the death negated suicide with a positive finding of accidental death. If suicide is rule out then in that event applicability of Section 498-A can be had only in terms of explanation (b) thereto which in no uncertain terms records harassment of the woman and the Statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce her to 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- there is total absence of any of the requirements of the Statute in terms of Section 498-A. The three letters said to have been written and as noticed earlier cannot possibly lend any credence to the requirement of the Statute or even a simple demand for dowry.”

20. Their lordships of Hon'ble Apex Court in **Manju Ram Kalita v. State of Assam** reported in (2009) 13 SCC 330 have held that cruelty for purpose of S. 498-A is to be established in that context as it may be different from other statutory provisions. It is to be

determined/ inferred by considering conduct of the man, weighing gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. Their lordships have held as under:

"12 Issue no. 2 relates to the applicability of 498A I.P.C. As it has been alleged by the complainant that she had been given physical and mental torture by the appellant and it was not possible for her to stay with the appellant after 1993 though she was having seven months' pregnancy at that time. She gave birth to a male child in the hospital and the appellant did not even come to see the child. The question would arise as to whether in the facts and circumstances where the complainant had left the matrimonial home and started living with her father in 1993, could a case be registered against the appellant under Section 498A I.P.C. in 1997?

13. The provisions of Section 498A IPC read 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 purposes of this section 'cruelty' means -

(a) any welful 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;

(b) harassment of the woman where such harassment is with a view to coercing her to 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."

Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment.

14. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The

elements of cruelty so far as clause (a) is concerned, have been classified as follows :

- (i) any `wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- (ii) any `wilful' conduct which is likely to cause grave injury to the woman; or
- (iii) any `wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

15 In *S. Hanumantha Rao v. S. Ramani*, AIR 1999 SC 1318, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that :

"mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

17. In *V. Bhagat v. Mrs. D. Bhagat*, AIR 1994 SC 710, this court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under :

"17.It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made....."

The context and the set up in which the word `cruelty' has been used in the section seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the

conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty." ◊

18. In *Mohd. Hoshan v. State of A.P.*; (2002) 7 SCC 414, this Court while dealing with the similar issue held that mental or physical torture should be "continuously" practiced by the accused on the wife. The Court further observed as under :

"Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

21. Single Judge of the Bombay High Court in **Sarla Prabhakar Waghmare v. State of Maharashtra** reported in 1990 CrLJ 407 has held that it is not every harassment or every type of cruelty that would attract S. 498-A. It must be established that beating and harassment was with a view to force wife to commit suicide or to fulfil illegal demands of husband and in-laws. The Single Judge has held as under:

"3. After incident of burning, the applicant had gone to stay with her parents at Nandura and from there she filed the proceedings under Section 125, Criminal Procedure Code, at Malkapur. The proceedings were withdrawn by her in view of the assurance that was given by her husband that he would take her and keep her with him. It is difficult to appreciate this conduct on the part of the applicant. It is alleged that thereafter again she was subjected to harassment and beating by the non-applicants. It is not every harassment or every type of cruelty that would attract Section 498-A, which reads as under, makes it absolutely clear "498-A. 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, subject 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."

After going through her evidence it does not appear that she has conclusively established that the beating and harassment was with a view to force her to commit suicide or to fulfil the illegal demands of the non-applicants. The trial Court has discussed this aspect at some length and has recorded a finding that offence under Section 498-A, Indian Penal Code, is not established. I do not see any reason to interfere with the same in my revisional jurisdiction at the instance of the complainant, particularly when the State has not challenged the impugned order."

22. A single judge of this Court in **Jiwan Lal V/s State of Himachal Pradesh**, reported in Latest HLJ 2012 (HP) Vol. 1. 231 has held that to constitute 'cruelty', under clause (b), there has to be harassment to coerce her or any person related to her to meet any unlawful demand and case has to be made out that there is a failure to meet such demand. The Single Judge has held as under:

"22. "Cruelty" has not been defined in the Indian Penal Code but the above explanations added to the Section spells out the ingredients of the offence of "cruelty" which are cruelty and harassment. The elements of cruelty so far as clause (a) is concerned can be classified as follows:

(i) any 'willful' misconduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any 'willful' conduct which is likely to cause grave injury to the woman; or

(iii) any 'willful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

23. In order to constitute "cruelty" under clause (b), there has to be a harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand.

24. In *Smt. Raj Rani v. State (Delhi Administration)*; AIR 2000 SC 3559 the apex Court held that while considering the case of cruelty in the context to the provisions of Section 498-A IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

25. Further, in another case *Girdhar Shankar Tawade v. State of Maharashtra*, AIR 2002 SC 2078, the Supreme Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498-A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

26. Taking note of the above judgments amongst others Supreme Court in *Manju Ram Kalita v. State of Assam* 2009 (2) S.L.J. (S.C.) 1036 observed that "cruelty" for the purpose of Section 498-A Indian Penal Code is to be established in the context of S. 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as "cruelty".

23. After bestowing my thoughtful consideration to the pleadings as well as evidence available on record, I have no hesitation to conclude that both the learned Courts below have erred in holding petitioner guilty of having committed offence punishable under Section 498A IPC, especially when there is/was no evidence adduced on record

by the prosecution specifically proving cruelty in terms of Section 498A IPC.

24. Their Lordships of the Hon'ble Supreme Court in case **Shobha Rani v. Madhukar Reddi** reported in **AIR 1988 SC 121** have explained the term "cruelty" as under:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when

a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

25. Their Lordships of the Hon'ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh** reported in (2007) 4 SCC 511, have enumerated some instances of human behaviour, which may be important in dealing with the cases of mental cruelty, as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly

clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty. ◊

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

26. Their Lordships of the Hon'ble Supreme Court in **Manisha Tyagi vs. Deepak Kumar** reported in **2010(1) Divorce & Matrimonial Cases 451**, have explained the term 'cruelty' as under:

"24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonable be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that would be harmful or injurious to continue the cohabitation with the other spouse. Therefore, to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However, in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce."

27. Their Lordships of the Hon'ble Supreme Court in **Ravi Kumar vs. Julumidevi** reported in (2010) 4 SCC 476, have explained the term 'cruelty' as under:

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times,

it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial case can be of infinite variety – it may be subtle or even brutal and may be by gestures and word. That possible explains why Lord Denning in *Sheldon v. Sheldon* held that categories of cruelty in matrimonial case are never closed.

21. This Court is reminded of what was said by Lord Reid in *Gollins v. Gollins* about judging cruelty in matrimonial cases. The pertinent observations are (AC p.660)

“.. In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.”

22. “ About the changing perception of cruelty in matrimonial cases, this Court observed in *Shobha Rani v. Madhukar Reddi* at AIR p. 123, para 5 of the report: (SCC p.108, para 5)

“5. It will be necessary to bear in mind that there has been (a) marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of

facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties.”

28. Consequently, in view of the aforesaid discussion, the impugned judgments of conviction recorded by the Courts below are set aside. Petitioner is acquitted of offence under Section 498A IPC. Bail bonds, if any, furnished by the petitioner are discharged. Fine amount, if any, deposited by the petitioner is also ordered to be refunded to him. Pending applications, if any, are disposed of.

**(Sandeep Sharma)
Judge**

April 11, 2017
(Vikrant)