

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7344 of 2014**

BABITA SUMANPRAKASH SONI WIFE OF PRADIPSINH BALVATSINH
MANDLAVAT....Applicant(s)

Versus
STATE OF GUJARAT & 1....Respondent(s)

Appearance:

MR.MRUDUL M BAROT, ADVOCATE for the Applicant(s) No. 1
MR GAURANG K PATEL, ADVOCATE for the Respondent(s) No. 2
MR AN SHAH, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

**Date : 04/12/2014
ORAL ORDER**

1. Rule returnable forthwith. Mr. Shah, the learned APP waives service of notice of rule for and on behalf of the respondent No.1- State of Gujarat. Mr. Gaurang K. Patel, the learned advocate has entered appearance on behalf of the respondent No.2- original complainant and waives service of notice of rule.

2. By this application, the petitioner- original accused seeks to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the F.I.R. being C.R. No.I-64 of 2014 filed before the Sabarmati Police Station, Ahmedabad City for the offence punishable under Sections-498(A), 294(B), 494 r/w.114 of the I.P.C. and the chargesheet which culminated in Criminal Case No.4636 of 2014 pending in the Court of the learned Chief Judicial Magistrate, Ahmedabad (Rural).

3. The case of the prosecution may be summarized as under:-

The respondent no.2- original informant is the wife of one Pradipsinh Balvantsinh Mandlavat. The marriage of the first informant with Pradipsinh Balvantsinh Mandlavat was solemnized on 11.12.2009. In the wedlock, a daughter was born viz.Dhriti on 31.10.2011. It is the case of the first informant that after the birth of the daughter, her husband started harassing her as he developed an extra-marital affair with the petitioner herein. She has alleged that the husband obtained signature of hers' on a blank paper and misused the same by creating a document of customary divorce. It is further the case of the first informant that her husband got married with the petitioner on 04.02.2014 at the Arya Samaj Temple, Chandlodia, Ahmedabad. According to the first informant, the root cause of all her matrimonial problems is the petitioner. She has alleged that the petitioner has therefore committed the offence as noted above.

4. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the prosecution should continue against the petitioner.

5. Although the chargesheet has been filed, yet the root question that arises for my consideration is whether the petitioner could be said to have committed the offence under Section-498(A) of the IPC.

6. This issue is squarely covered by two decisions of the Hon'ble Supreme Court (i) in the case of 'Vijeta Gajra Vs. State of NCT of Delhi' reported in AIR 2010 SC 2712; (ii) in the case of 'U. Suvetha Vs. State By Inspector of Police' reported in AIR 2009 SC (Suppl.) 1451.

7. I may quote with profit the observations made by the Hon'ble Supreme Court in the case of 'Vijeta Gajra Vs. State of NCT of Delhi' (Supra) as under:-

"7. Shri U.U. Lalit, Learned Senior Counsel, appearing on behalf of the appellant argued that in U. Suvetha v. State By Inspector of Police & Anr. [(2009) 6 SCC 757], it was specifically held that in order to be covered under Section 498A, IPC one has to be a 'relative' of the husband by blood, marriage or adoption. He pointed out that the present appellant was not in any manner a 'relative' as referred to in Section 498A, IPC and, therefore, there is no question of any allegation against her in respect of the ill-treatment of the complainant. The Court in this case examined the ingredients of Section 498A, IPC and noting the specific language of the Section and the Explanation thereof came to the conclusion that the word 'relative' would not include a paramour or concubine or so. Relying on the dictionary meaning of the word 'relative' and further relying on R. Ramanatha Aiyar's Advance Law Lexicon, Volume 4, 3rd Edition, the Court went on to hold that Section 498A, IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in T. Ashok Pai v. CIT [(2007) 7 SCC 162]. A reference was made to the decision in Shivcharan Lal Verma & Anr. v. State of M.P. [(2007) 15 SCC 369]. After quoting from various decisions of this Court, it was held that reference to the word 'relative' in Section 498A, IPC would be limited only to the blood relations or the relations by marriage.

8. Relying heavily on this, Shri Lalit contended that there is no question of any trial of the appellant for the offence under Section 498A, IPC. The argument is undoubtedly correct, though opposed by the Learned Counsel appearing for the State. We are of the opinion that there will be no question of her prosecution under Section 498A, IPC. Learned Senior Counsel appearing on behalf of the complainant, Shri Soli J. Sorabjee, also did not seriously dispute this proposition. Therefore, we hold that the FIR insofar as it concerned Section 498A, IPC, would be of no consequence and the appellant shall not be tried for the offence under Section 498A, IPC."

8. I may also quote with profit the observations made by the Hon'ble Supreme Court in the case of 'U. Suvetha Vs. State By Inspector of Police' (Supra) as under:-

5. Inter alia on the premise that the allegation made against the appellant in the first information report, even if it be given face value, does not disclose an offence under Section 498A of the Indian Penal Code, an application for discharge was filed by her. The same was dismissed on 25th March, 2008. A revision application filed thereagainst has been dismissed by the High Court by reason of the impugned judgment dated 1st August, 2008.

6. In the first information report except at one place the appellant has been described by the first informant as 'girl friend' of her husband and only at the end the word 'concubine' has been used. The core question which arises for consideration is as to whether the 'girl friend' would be a 'relative of husband of a woman' in terms of Section 498A of the Indian Penal Code. Section 498A of the Indian Penal Code 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 willful 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."

7. The aforementioned provision was inserted in the Indian Penal Code by reason of The Criminal Law (Second Amendment) Act, 1983 (Act No.45 of 1983). The statement of objects and reasons thereof reads as under :-

"The increasing number of Dowry Deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of, the hapless woman

concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of Dowry Death but also cases of cruelty to married woman by their in laws."

8. The High Court opined that the word 'paramour' and the 'concubine' stand on the same footing. In arriving at the said opinion, it agreed with the decision of a Division Bench of Andhra Pradesh High in Vungarala Yedukondalu v. State of Andhra Pradesh, [1988 CRI. L.J. 1538] and differed with the decision of the Bombay High Court, to opine :-

"The term "relative" has not been defined in Indian Penal Code and in the absence of any such definition, we have to go by the precedents. Assuming that the allegations made against the petitioner viz., that she is the concubine of A1 is true, then, it is to be held that there is a living relationship between the petitioner and A1 in the case and there are specific allegations to the fact that only at the instigation of the revision petitioner, A1 is harassing the second respondent and as such this Court is of the considered view that a charge under Section 498-A of IPC among other offence has also been rightly framed against the revision petitioner."

9. Ingredients of 498A of the Indian Penal Code are :-

- a) The woman must be married
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband."

10. Appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged. A woman in terms of the aforementioned provision must be subjected to cruelty by her husband and/or his relative. The word 'cruelty' has also been defined in the explanation appended thereto. It is in two parts. Clause (a) of the said explanation refers to a conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); clause (b) provides for 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. It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

11. 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 498A of the Indian 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 be subjected to her to cruelty within the aforementioned provision. If the appellant had not 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 Indian Penal Code and appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498A of the Indian Penal Code.

12. 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 grand-daughter of an individual or the spouse of any person. The meaning of the word 'relative' would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption. The word 'relative' has been defined in P. Ramanatha Aiyar Advanced Law Lexicon - Volume 4, 3rd Edition as under :-

"Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act]. The expression "REALTIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act]. "RELATIVE" means in relation to the deceased,

- a) the wife or husband of the deceased;
- b) the father, mother, children, uncles and aunts of the deceased, and
- c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if,

- a) they are the members of a Hindu undivided family, or
- b) they are husband and wife; or
- c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means -

- a) The mother, father, husband or wife of the individual, or
- b) a son, daughter, brother, sister, nephew or niece of the individual, or
- c) a grandson or grand-daughter of the individual, or
- d) the spouse of any person referred to in sub-clause (b) [Income tax Act].

"REALTIVE" means -

- 1) spouse of the person ;
- 2) brother or sister of the person ;
- 3) brother or sister of the spouse of the person;
- 4) any lineal ascendant or descendant of the person;
- 5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act]." Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean :-

"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference : relevant; pertinent (usually fol. by to): two facts relative to the case. 9. correspondent; proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor."

13. Further more, the provision is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is

required to be construed strictly. This Court in T. Ashok Pai v. Commissioner of Income Tax, Bangalore, [2007 (8) SCALE 354] held as under :-

"19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr. 1995 Supp (2) SCC 187]."

[See also Noor Aga v. State of Punjab, [2008 (9) SCALE 681].

14. A Three Judge Bench of this Court, however, in Shivcharan Lal Verma and another v. State of M.P., [2002 (2) Crimes 177 SC = JT (2002) 2 SC 641] while interpreting Section 498A of the Indian Penal Code, in a case where the prosecution alleged that during the life of the first wife- Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-.

..One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC."

15. A Two Judge Bench of this Court, however, in Reema Aggarwal v. Anupam, [(2004) 3 SCC 199], while construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating :-

"...If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance.

According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions -- Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. 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 Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

16. It is not necessary to go into the controversy as to whether Reena Agarwal (supra) was correctly decided or not as we are not faced with such a situation here. We would assume that the term 'husband' would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty.

17. Herein, as noticed hereinbefore, relationship of the appellant with the husband of the first informant, is said to have been existing from before the marriage. Indisputably they lived separately. For all intent and purport the husband was also living at a separate place. The purported torture is said to have been inflicted by the husband upon the first informant either at her in- law's place or at her parents' place. There is no allegation that appellant had any role to play in that regard.

18. By no stretch of imagination a girl friend or even a concubine in an etymological sense would be a 'relative'. The word 'relative' brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

19. We may notice that the Andhra Pradesh High Court in Rajeti Laxmi v. State of Andhra Pradesh, [1 (2007) DMC 797], held as under :-

"4. The entire reading of the charge-sheet and the statements

of L.Ws. 1 to 7, goes to show that it is nobody's case of the accused or the prosecution that A-6 is the relative of husband of L.W. 1. She is only concubine of A-1 and having illicit intimacy with him. Therefore, in the absence of any averment in the charge-sheet or any statement that she is a relative of A1, I am of the opinion that the offence under Section 498A, IPC do not attract to A-6. Even as per the dictionary meaning "relative" means a person connected by blood or marriage or 'a species' related to another by common origin". Simply because A-6 is having illicit intimacy with A-1, it cannot be said that she is a relative of A-1. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C. No.233 of 2004 for the offence under Section 498-A, IPC, against the petitioner,A-6. Insofar as the other offences are concerned, it may go on."

A learned Single Judge of the Bombay High Court, Bench at Aurangabad, in Swapnaja v. State of Maharashtra and another, [Criminal Application No.388 of 2008 decided on 21.4.2008], opined :-

"....Even assuming that due to her extramarital relation with husband of the respondent No.2, she is being ill-treated or subjected to harassment by her husband and his relatives, then also it is difficult to say that the applicant is accountable to answer the charge for offence punishable under Section 498-A of the I.P.C. For, she is not related to husband of the respondent No.2 nor can be regarded as the person, who can fall within explanation (a) or (b) of Section 498-A of the I.P.C."

To the similar effect is the law laid down by the same High Court in Ranjana Gopalrao Thorat v. State of Maharashtra, [2007 C.R.I.L.J. 3866]. A learned Single Judge of the Delhi High Court, however, preferred to follow Shivcharan Lal Verma (supra) in preference to Reena Aggarwal (supra) to hold that precedentially the former is binding on the High Court, stating :-

" Therefore the decision in Shivcharan Lal Verma (supra) will clearly take precedence over the decision in Reema Aggarwal (supra). That being the case, the arguments advanced by the learned Counsel for the petitioners would have to be accepted that the provisions of Section 498-A IPC would not be attracted inasmuch as the marriage between Mohit Gupta and Shalini was null and void and Mohit Gupta could not be construed as a 'husband' for the purposes of Section 498-A IPC. Clearly, therefore, the charge under Section 498-A IPC cannot be framed and the Metropolitan

Magistrate had correctly declined to frame any charges under Section 498-A IPC."

Similar view was taken by a learned Single Judge of the same High Court in Capt. Rajinder Tiwari v. The State (NCT of Delhi), [Criminal Revision P. No. 872 of 2006 decided on 14.12.2006], stating :

"9. As already indicated above, insofar as the charge under Section 498A IPC is concerned, that issue is no longer open for debate. The same has been decided by this Court in the case of Mohit Gupta & others (supra) applying the ratio of the Supreme Court decision in the case of Shivcharan Lal Verma (supra). Since the marriage between Rajidner and Meenakshi was a nullity in view of the pendency of Rajinder's divorce proceedings qua his first wife, the offence under Section 498A, which is specific to "husband", would not be maintainable, therefore, the impugned order needs to be corrected on this ground also."

9. In view of the aforesaid settled position of law, it could not be said that the petitioner who is alleged to have been having an extramarital affair with the husband of the first informant since 2011, would fall within the ambit of "Relative". Let me assume for the moment that the husband of the first informant has got married with the petitioner in February, 2014. *Prima-facie*, the marriage is invalid. The first marriage is still in subsistence. In such circumstances, the offence under Section-498A could not be said to have been committed.

10. The above takes me to deal with Section-494 of the IPC. Section-494 cannot be made applicable against the petitioner because Section-494 is an offence committed by the husband. If a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The husband is sought to be prosecuted for the offence under Section-494 of the IPC. The same cannot be made applicable so far as the petitioner before me is

concerned.

11. In such circumstances as referred to above, I am of the view that no case is made out to put the petitioner to trial on the charge of having committed offence under Section-498A and 494 of the IPC.

12. In the result, this application is allowed. The further proceeding of the Criminal Case No.4636 of 2014 pending in the Court of the learned Chief Judicial Magistrate, Ahmedabad (Rural) arising from the F.I.R. being C.R. No.I-64 of 2014 filed before the Sabarmati Police Station, Ahmedabad City, so far as the petitioner herein is concerned, are hereby ordered to be quashed. Consequently, all further proceedings pursuant to the FIR shall stand terminated.

13. It goes without saying that any observations touching the merits of the case are purely for the purpose of deciding the question whether any case is made out against the petitioner and shall not be construed as an expression of the final opinion in the main matter. The trial Court shall not be influenced in any manner by any of the observations made in the order.

The Registry is directed to accept the vakalatnama of Mr. Gaurang K. Patel, the learned advocate who appeared on behalf of the respondent no.2-complainant.

Rule is made absolute. Direct service is permitted.

(J.B.PARDIWALA, J.)

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