IN THE HIGH COURT OF KARNATAKA AT BANGALORE ®

DATED THIS THE 25th DAY OF JUNE 2012

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL REVISION PETITON NO.1308 OF 2010

BETWEEN:

S.Praveen,
Son of A.Siddappa,
Aged about 26 years,
Resident of Dwaralu Village,
Sira Taluk,
Tumkur District. …PETITIONER

(By Shri. S.K.Venkata Reddy, Advocate)

AND:

State of Karnataka,
By Tavarekere Police,
Sıra Taluk,

Tumkur District. …RESPONDENT

(By Shri. P. Karunakara, High Court Government Pleader)

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This Criminal Revision Petition filed under Section 397 read with 401 Criminal Procedure Code, 1973 by the Advocate for the petitioner praying that this Hon'ble Court may be pleased to set aside the impugned judgment dated 15/26.2.2010 passed by the Civil Judge (Jr.Dn.)and Judicial Magistrate First Class, Sira in C.C.No.409/2007 and judgment dated 30.9.2010 passed by the Presiding Officer, Fast Track Court-II, Tumkur, in Criminal Appeal No.29/2010, in so far as this petitioner is concerned, by allowing this Criminal Revision Petition consequently acquit the petitioner/A1 of offence punishable under Section 498(A) of Indian Penal Code.

This Criminal Revision Petition having been heard and reserved on 11.6.2012 and coming on for pronouncement of orders this day, the Court delivered the following:-

ORDER

Heard the learned counsel for the petitioner and the learned Government Pleader.

2. The petitioner was the accused before the trial court in the following circumstances:

The complainant alleged that accused no.1, the petitioner herein and she were in love with each other and had decided to marry, but before they could marry, she was pregnant with a child of the petitioner and she had informed the petitioner of the same. On learning of the pregnancy, it is alleged that the petitioner absconded. The complainant claimed that on 16.11.2006, she went to Dwaralu village, which was the petitioner's native village and met his parents and inquired about his whereabouts. She also intimated them about the relationship that she and the petitioner had. The parents of the petitioner had advised the complainant that they would secure the presence of their son and would ensure that they are married. In the meantime, they requested her not to institute any case against the petitioner. With that assurance, she had returned to Bangalore.

3. It transpires that the petitioner, along with an advocate, had met the complainant and had expressed that the marriage between the petitioner and the complainant was not possible, since they belonged to different castes and that the families may not reconcile to the same.

In this background, the complainant had again met accused no.2, the mother of the petitioner and intimated her about the petitioner's attitude. She was again reassured that the petitioner would be persuaded to marry her, but nothing changed. Therefore, the complainant lodged a complaint before the J.P.Nagar Police Station on 24.11.2006. On 25.11.2006, the petitioner is said to have gone along with the complainant to J.P.Nagar Police Station and the Police had convinced the petitioner that he had no choice, but to marry the complainant. The complainant, therefore, had claimed that they were married at Ganapathi temple at 4th Block, J.P.Nagar, Bangalore and the mother of the petitioner had also attended the marriage.

4. It is her further case that since the petitioner had expressed that he had no money to set up a home, she had paid cash of `50,000/- and also handed over two bangles, in order that he may use the same for setting up a home. It is her allegation that the petitioner did not do so, but misused the amount for himself. Thereafter, on 29.12.2006, the complainant is again said to have approached the J.P.Nagar Police and

informed them of the conduct of the petitioner. The presence of the petitioner was again secured on 31.12.2006 and it is claimed that there was reproachment brought about by the Police once again, but however, the petitioner is said to have deserted the complainant by February 2007. Therefore, the complainant is said to have visited Dwaralu village to meet the parents of the petitioner. But the father of the petitioner had not permitted her to enter their house and had chased her away. Therefore, she had proceeded to the Tavarekere Police Station, which refused to receive any complaint. Thereafter, with the intervention of the Superintendent of Police, Tumkur, a complaint is said to have been lodged on 9.2.2007,which was forwarded to the jurisdictional Police and a case came to be registered. Further investigation having been taken up, a charge-sheet was filed against the petitioner and his parents. Since the accused pleaded not guilty and claimed to be tried, the prosecution examined 13 witnesses and marked Exhibits - P1 to P24.

5. On the basis of the material produced and the allegations

made, the trial court had framed the following point for consideration:

> "1. Whether the prosecution proves beyond all reasonable doubt that on 2.02.2007, at about 6.00 p.m., at Dwaralu village, accused being the husband of complainant – B.L.Suneetha, Accused No.2 and 3 relatives of Accused No.1 made quarrel with her and gave both physical and mental harassment without providing food and shelter in their house and thrown out from the house and thereby committed an offence punishable under Section 498(A) read with 34 Indian Penal Code?
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> 2. What Order? "

The trial court answered the same in the affirmative and convicted the petitioner for an offence punishable under Section 498A of the Indian Penal Code, 1860 (hereinafter referred to as ' the IPC' for brevity) and they were sentenced to undergo simple imprisonment for a period of one year for the said offence. The same

having been carried in appeal, it was set aside and modified. The parents of the petitioner were acquitted and the conviction and order of sentence against the petitioner was confirmed. It is that which is under challenge in the present petition.

6. The learned counsel for the petitioner would contend that the courts below have not appreciated the ingredients of Section 498A of the IPC. It is suggested that the ingredients are that the husband of a woman should have subjected her to cruelty and such cruelty should be with a view to coerce her or any person related to her, to meet any unlawful demand of any property or valuable security and that the harassment is on account of failure by her or any person related to her to meet such demand. Therefore, it would be evident that the law contemplates as a precondition that there should be a valid marriage in accordance with law between the complainant and the accused and the husband should have harassed his wife or treated her with cruelty to meet any unlawful demand for any property or valuable security. In the present case on hand, the complainant had not at all proved her

marriage with the petitioner, except producing certain photographs. Significantly, the negatives of the same were never brought on record. On the basis of such evidence, the petitioner could not be termed to be the legally wedded husband of the complainant. Therefore, the very first precondition to establish an offence punishable under the said Section is absent. There is nothing on record to indicate the custom or rituals, in accordance with which the alleged marriage had taken place. The prosecution has sought to rely on Exhibit P.24, which is said to be an undertaking given by the petitioner before the J.P.Nagar Police, to the effect that he would take care of the complainant. This by itself would not establish that the complainant and the petitioner were legally wedded. PWs 1 to 3 were residents of Dwaralu village, the native place of the petitioner. Significantly, they have not spoken about the valid marriage between the complainant and the petitioner. They have also not stated about the complainant and the petitioner having lived together as husband and wife. There is also no indication of any harassment caused by the

petitioner to the complainant to meet any unlawful demand for any property or valuable security. PW.4, who was said to have been present when the complainant and the petitioner got married at the Ganapathi temple, has not spoken about the rituals and customs that were performed at the time of the marriage. He has also not endorsed about the complainant and the petitioner having lived together as husband and wife. Apart from PW.12 and 13, who were again close relatives and had not stated about the rituals and customs performed at the valid marriage, all other witnesses were formal witnesses for the prosecution, whose evidence does not establish that there was marriage between the complainant and the petitioner. The courts below have glossed over this significant aspect and have treated the marriage as a 'love marriage' and have proceeded to hold that the allegations would constitute an offence punishable under Section 498A of the IPC. Significantly, the parents of the complainant have not been examined as witnesses in the case, atleast to the extent of proving the valid marriage.

7. The learned Counsel would place reliance on a judgment in the case of *State vs. Prasanna Kumar Senapati, 2007 Cri.LJ 1344,* which was an identical case, whereby the alleged marriage at a temple was sought to be characterised as a valid marriage and the Orissa High Court had negated the assertion that there was a valid marriage, in the absence of a priest who conducted the marriage having been examined and other circumstances, which did not implicate the accused in having brought about the death of the alleged wife.

8. Reliance is also placed on the case of *D.Velusamy vs.D.Patchaiammal, 2010(7) Supreme 321,* which arose out of a case for maintenance under Section 125 of the Criminal Procedure Code, 1973, (hereinafter referred to as ' the Cr.P.C.' for brevity) and with reference to the expression ‘wife’ as employed in the said Section, the decision of a three-judge bench of the Supreme Court in *Vimala(K) vs. Veeraswamy(K), (1991) 2 SCC 375,* has been followed, wherein it was laid down that the expression ‘wife’ as employed in Section 125 of the Cr.P.C., includes a woman, who has been divorced by a

husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife was thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law, a second wife, whose marriage is void on account of the survival of the first marriage, is not a legally wedded wife and is therefore not entitled to maintenance under the provision and the same has been followed in holding that a woman cannot claim to be the wife, unless it is established that the man was not already married, in that, the first marriage was not subsisting. The learned counsel would further submit that this is also consistent with the view in the case of *Savitaben Somabhai Bhatiya vs. State of Gujarat, AIR 2005 SC 1809,* while it has been observed that the Legislature considered it necessary to include within the scope of the provision, an illegitimate child, but, it has not done so with respect to a woman not lawfully married and however, desirable it may be, to take note of the plight of the unfortunate woman. The legislative intent being clearly reflected in Section 125 of the Cr.P.C.,

there was no claim for enlarging its scope by introducing any artificial definition to include a woman not lawfully married in the expression 'wife'. Therefore, the learned Counsel would submit that the courts below have hence overlooked the primary ingredients, which would necessarily have to be present to establish that the offence punishable under Section 498A of the IPC had been committed. The Counsel, hence, seeks that the petition be allowed and the judgment of the lower appellate court be set aside insofar as the petitioner is concerned.

9. On the other hand, the learned Government Pleader would submit that the primary contention of the learned counsel for the petitioner is that there is no valid marriage between the complainant and the petitioner and would submit that the question has been answered in the case of *Reema Aggarwal v.s Anupam and others, (2004) 3 SCC 199. W*ith specific reference to a question as to who would be covered by the expression 'husband' for attracting Section 498A, the apex court has held that etymologically in terms of the

definitions of 'husband' and 'marriage' as given in the various law lexicons and dictionaries, the existence of a valid marriage may appear to be *sine qua non* for applying a penal provision and has opined that the concept of marriage to constitute the relationship of husband and wife may require strict interpretation where claims for civil rights, right to property, etc., may follow or flow and a liberal approach and the different perception cannot be an anathema when the question of curbing a social evil, such as, dowry is concerned. The apex court has further observed that if the legality of the marriage itself is an issue, further legalistic problems do arise. In that, if the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then, the purpose for which Section 498A and Section 304-B IPC as well as Section 113E of the Indian Evidence Act, 1872 were introduced, cannot be lost sight of. The legislation enacted with some policy, to curb and alleviate some public evil rampant in society, requires to be interpreted with a certain element of

realism. Therefore, the legalistic niceties would destroy the purpose of the provisions and therefore concluded that whatever be the legitimacy of the marriage itself, for the limited purpose of Section 498A and 304B of the Indian Penal Code, the interpretation known as purposive construction would come into play in such circumstances and the absence of a definition of 'husband' is specifically include such persons who contract marriage 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 the said sections.

10. The learned Government Pleader would therefore rely on the said judgment to support the contention that a legally valid marriage is not a precondition. This decision has been relied upon and applied in yet another judgment of the apex court in the case of *U.Suvetha vs. State by Inspector of Police, 2009 (2) Crimes 357* and has cited with approval the opinion of the Kerala High Court in the case of *John Idiculla vs. State of Kerala, 2005 MLJ(Crl.) 841,* where a wider meaning to the word 'second wife' has been given in the

following words:-

> *"25. The test under Section 498A Indian Penal Code is whether in the facts of each case, it is probable that a woman is treated by friends, relatives, husband or society as a "wife" or as a mere "mistress". If from the pleading and evidence the Court finds that the woman concerned is regarded as wife and not as a mere mistress, she can be considered to be a 'wife' and consequently as 'the relative of the husband' for purpose of Section 498A IPC. Proof of a legal marriage in the rigid sense as required under civil law is unnecessary for establishing an offence under Section 498A IPC. The expression "marriage" or "relative" can be given only a diluted meaning which a common man or society may attribute to those concepts in the common parlance, for the purpose of Section 498A IPC. A second wife who is treated as wife by the husband, relatives, friends or society can be considered to be 'the relative of the husband' for the purpose of Section 498A of IPC. If she inflicts cruelty on the legally-wedded wife of the husband, an offence under Section 498A IPC will not lie against her."*

And the learned Government Pleader would submit that the first ingredient of Section 498A stands satisfied insofar as the present case on hand, in that, there are certain photographs produced coupled with

the fact that the petitioner had given an undertaking before the jurisdictional police and the eye-witness to the marriage were sufficient to establish that the petitioner had married the respondent. It was not even a case where the marriage was alleged to be a second marriage, thereby rendering it a void marriage. It is not the case of the petitioner that the complainant was a stranger to him. The insistence on strict proof of marriage, as laid down in the above decisions, is not so.

11. Insofar as the cruelty which requires to be established is concerned, is on account of the fact that there was reluctance on the part of the petitioner to marry the complainant citing lack of financial independence, compelling the complainant to part with valuable property, coupled with the fact that cruelty, as contemplated under Section 498A has been defined in a wider sense and cannot be restricted in the manner as sought to be canvassed by the learned counsel for the petitioner. The punishment has been imposed with particular reference to the degree of cruelty that has been established

and therefore, it is not a case which would warrant interference by this court in a revision and hence, the Government Pleader prays that the petition be dismissed.

12. In the above facts and circumstances and with reference to the law as laid down by the apex court, for purposes of Section 498A of the IPC, though it may not be essential that a legally valid marriage is established, it was necessary to establish that the petitioner and the complainant had lived together as husband and wife. In this regard, there is sadly no evidence is forthcoming. Therefore, even the wider definition applied to the expressions 'husband' and 'marriage' with reference to the decisions of the apex court referred to hereinabove would not come to the aid of the prosecution. Further, insofar as the second limb of the requirements under Section 498A is also not established for the reason that there is not even an allegation of the petitioner having demanded or coerced the complainant to meet any unlawful demand and of the complainant having been harassed on her failure to meet such demand. The mere allegation of desertion,

whether it was bordered on cruelty, was never within the purview of the courts below and it is outside the scope of this revision petition. Therefore, the primary ingredients necessary to constitute an offence punishable under Section 498A were clearly absent and hence the conviction of the petitioner by both the courts below is clearly bad in law.

Accordingly, the petition is allowed and the judgment of the courts below is set aside insofar as the conviction of the present petitioner is concerned.

Sd/-
JUDGE

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