

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Criminal Petition No.8086 of 2013

Between:

Smt. Shaik Riayazun Bee.
Petitioner(A.6)

And

The State of A.P. rep by P.P
High Court of A.P, Hyderabad
and another.

Respondents

DATE OF JUDGMENT PRONOUNCED: **01.06.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes
/ No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.8086 of 2013

% 01.06.2016

Between:

Smt. Shaik Riayazun Bee.
Petitioner(A.6)

And

The State of A.P. rep by P.P
High Court of A.P, Hyderabad
and another.

Respondents

! Counsel for Petitioner : Sri C.B.Rammohan Reddy

**^ Counsel for Respondent No.1 : Public Prosecutor for
State (AP)**

^ Counsel for Respondent No.2 : Sri N.V.Anantha Krishna

< Gist:

> Head Note:

? Cases referred:

- 1) (2014) 9 SCC 632
- 2) (2009) 6 SCC 757
- 3) AIR 2010 SC 2712

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.8086 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/A6 seeks to quash the proceedings in Cr.No.93 of 2013 of II Town Police Station, Madanapalle whereunder the petitioner and five others were charged for the offences under Sections 498A, 323 and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

2a) A2 and A3 are parents, A4 is the sister and A5 is the brother of A1. Petitioner/A6 is concerned, she is former wife of complainant's elder brother—Amjad Baig. The *defacto* complainant is the wife of A1. She filed a private complaint before the Judicial Magistrate of First Class, Madanapalle against A1 to A6 for the aforementioned offences and the said complaint was forwarded to the police of Madanapalle II Town PS under Section 156 (3) Cr.P.C. and the same was registered as Cr.No.93 of 2013 and being investigated into. Hence, the instant quash petition at the instance of petitioner/A6.

b) The private complaint which was registered as FIR is a long document containing various instances of harassment and cruelty allegedly meted out by A1 to A5 against the complainant with which we are not much concerned, as A1 to A5 are not before us. In the instant application, we are solely concerned with the allegations levelled against petitioner/A6. Such allegations can be found in para-7 of the complaint which reads thus:

“Para-7 The eldest brother of the complainant who was the former husband of accused No.6 is working as software engineer at London. The eldest brother of the complainant secured employment to accused No.1 at London and accused No.1 was staying in the house of the eldest brother of the complainant and accused No.6 at London for some months and later the complainant also went to London and stayed in the house of her brother. During the stay of accused No.1 in the house of the elder brother of the complainant, the accused No.1 used to move very closely with accused No.6 and later accused

No.1 developed illicit intimacy with accused No.6 and both of them used to stay together lonely and the complainant noticed accused No.1 and accused No.6 in one room lonely since then accused No.6 began to spread false news against the complainant before relatives stating that the complainant is not suitable match to accused No.1 and the accused No.1 had no liking towards the complainant.”

c) So, the basic allegation against petitioner/A6 is that the elder brother of the complainant viz. Amjad Baig was the former husband of petitioner/A6 and he was working as software engineer at London and at that time, himself and A6 were living together at London. He secured a job for at London probably at the instance of complainant and A1 for some time stayed in the house of elder brother of complainant at London. Thereafter, complainant also went to London and stayed in the house of her brother and during her stay in her brother's house, she noticed that her husband (A1) and her sister-in-law i.e. A6 were moving closely and they developed illicit intimacy. She claimed that she noticed them in a compromised position. This is one allegation against A6 and also of course against A1. She further alleged that A6 began spreading false rumours against complainant before relatives stating that complainant was not a suitable match to A1 and he was not liking her.

d) Apart from the above allegations, the complainant made an omnibus allegation as if on the instigation of A2 to A6, several times A1 physically assaulted the complainant while staying at London and also at Nellore. It may be noted that

after the above instance, it appears that the elder brother of complainant took divorce against A6 in London in a Family Court at London on some grounds but not on the ground that she was having illicit connection with A1.

3) Heard arguments of learned counsel for petitioner, learned counsel for 2nd respondent/complainant and learned Public Prosecutor (AP).

4a) Learned counsel for petitioner/A6 sought for quashing the proceedings on two main grounds. Firstly, even if allegations in the FIR are taken to be true, they do not constitute any offence against petitioner/A6 muchless offence under Section 498A IPC because she is not a relative of the husband within the meaning of Section 498 IPC, as she was the sister-in-law of complainant during the relevant period but not the relative of her husband and further, the allegations against her were only to the effect that she allegedly had an illicit connection with the husband of the complainant i.e. A1 and she made a propaganda that complainant was not a mach to A1 and he had no liking for her. So, going by the allegations in the FIR they do not attract the offence under Section 498A IPC because she is not the relative of the husband (A1) and she has not committed any acts of cruelty. It is argued that the other offences are also not attracted against her. He relied upon the decision of the Apex Court in ***State of Punjab v. Gurmit Singh***^[1].

b) Secondly, it is argued that as per the FIR allegations the

offence was committed at London and therefore, the police and Courts in India have no jurisdiction to investigate and try the case.

5a) Per contra, learned counsel for R2/complainant and learned Public Prosecutor vehemently argued that at the relevant time of offence A6 was the wife of complainant's eldest brother and the marital relationship existed between them. By virtue of the marriage between A1 and complainant, A1 acquired relationship with the relatives of complainant's side. Therefore, though A6 was not directly a relative of A1, however, by virtue of his marriage with complainant, A6 became the relative of A1 and therefore, she can be called as "*relative of the husband*" within the meaning of Section 498A IPC. As A6 made false propaganda against complainant and incited A1 to harass her, she is squarely liable for the offence under Section 498A IPC.

b) Secondly, with regard to jurisdiction aspect, it is argued that the FIR allegations would show some part of the offence committed by the accused took place in India and some part took place at London. As it being a continuous offence, the investigation and trial can be taken place in India. Thus they prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

7 a) **POINT:** The second contention of the petitioner is concerned, I am unable to accept the same because the allegations levelled in the FIR clearly disclose that some part of the offences levelled in the FIR took place in India and some part of the offences took place in London and therefore, in my considered view, it is preposterous for petitioner/A6 to contend that offence cannot be investigated and tried in India.

b) Then, coming to main argument of the petitioner, I find much force in it. The facts would show that during the relevant period of alleged offence, petitioner/A6 was the wife of Amjad Baig—elder brother of complainant. The marital tie was subsisted between them at that time and they were living at London. As already stated supra, the allegation is that on account of job, A1 went to London and resided in the house of the elder brother of complainant at London and thereafter complainant also joined him and during her stay she noticed that some illicit intimacy was developed between A6 and A1. When she questioned them, A6 started making propaganda that complainant was not a fit match to A1 and he has no liking for her. Hence the moot point is whether the offence under Section 498A IPC is applicable to petitioner/A6 even if the allegations levelled in the FIR are taken to be true on their face value. Section 498IPC says:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be

liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

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

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

8) The controversy is relating to interpretation of the phrase “*relative of the husband of a woman*” employed in Section 498A IPC. No definition of the above phrase was given in IPC. Hence, we have to necessarily fallback on precedential jurisprudence. Once the Supreme Court was engaged with the question whether the girl friend or concubine of husband is a relative of the husband within the meaning of Section 498A IPC in ***U.Suvetha v. State by Inspector of Police***^[2]. In this Context, the Supreme Court observed that since the provision is a penal one, it 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. Having thus observed and analyzing various decisions, the Apex Court ultimately held that appellant who is said to be a girl friend/concubine of the husband is not a relative of the husband of the complainant.

9) On another occasion, in ***Vijeta Gajra v. State of NCT of Delhi***^[3] the Apex Court engaged with the question whether

the foster sister who is allegedly having illicit connection with the husband of the complainant falls within the ambit of “*relative of the husband*” within the meaning of Section 498A IPC. The Apex Court considering its earlier decision in ***U.Suvetha*** (2 supra) and other decisions held that she would not fit in the slot and accordingly quashed the proceedings against her for the offence under Section 498A IPC.

10) In the above two cases, the Apex Court reiterated that “*relative of the husband*” for the purpose of Section 498A means related by blood, marriage or adoption.

11) Then, coming to ***Gurmit Singh***'s case (1 supra) cited by the petitioner/A6, the facts are that Paramjit Singh and some of his relatives along with respondent—Gurmit Singh were charged for the offence under Section 304B IPC. Paramjit Singh is the husband of deceased. The other accused including the respondent—Gurmit Singh are his relations. Gurmit Singh is concerned, admittedly he is the brother of Paramjit Singh's paternal uncles' wife (i.e. father's brother's wife's brother). The respondent Gurmit Singh claimed that he is not relative of the husband within the meaning of Section 304 IPC. The Apex Court in that context observed thus:

*“Para—8 The expression relative of the husband further came up for consideration in the case of **Vijeta Gajra v. State of NCT of Delhi** ((2010) 11 SCC 618) and while approving the decision of this Court in **U. Suvetha** (Supra), it was held that the word relative would be limited only to the blood relations or the relations by marriage. It is*

appropriate to reproduce the following passage from the said judgment:

12. *Relying on the dictionary meaning of the word "relative" and further relying on Ramanatha Aiyar's, Advance Law Lexicon (Vol. 4, 3rd Edn.), the Court went on to hold that Section [498-A](#) Indian Penal Code 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 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 [498-A](#) Indian Penal Code would be limited only to the blood relations or the relations by marriage.*

The Apex Court ultimately held that he is not relative of the husband within the meaning of Section [304B](#) IPC.

12) So, from the above successive decisions of the Apex Court, it can be noted that penal provisions required strict construction and when the phrases of a statute are not defined, they have to be understood in the natural, ordinary or popular sense. That being so, the phrase "*relative of the husband*" employed in Section 498A IPC should be understood as "*relatives of the husband's side*" with whom he obtained relationship by way of blood, marriage or adoption. That being so A6 during the relevant period being the sister-in-law of complainant, she cannot be said to be the "*relative of the husband*". It is true by virtue of marriage between A1 and complainant, the relatives of one side became relatives of both sides in a general sense. However, for the strict construction of

penal provision under Section 498A, A6 who was the relative of the complainant, cannot be said to be the relative of the husband of the complainant i.e.A1. For this reason and also for the reason that no allegations of cruelty falling within the meaning of Section 498A IPC and the allegations touching other offences are made against A6, she deserves quashment of the proceedings.

13) In the result, this Criminal Petition is allowed and proceedings in Cr.No.93 of 2013 of II Town Police Station, Madanapalle are quashed against petitioner/A6.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 01.06.2016

Murthy

[\[1\]](#) (2014) 9 SCC 632

[\[2\]](#) (2009) 6 SCC 757

[\[3\]](#) AIR 2010 SC 2712