

Bombay High Court

Smt. Sarla Prabhakar Waghmare vs State Of Maharashtra And Others on 10 April, 1989

Equivalent citations: 1990 CriLJ 407, I (1991) DMC 310

Bench: M Qazi

ORDER

1. The applicant is the wife of non-applicant No. 2. Non-applicants Nos. 3 and 4 are the parents of non-applicant No. 2. The applicant was married to non-applicant No. 2 on 8-4-1983. It is alleged by the applicant that almost soon after the marriage her husband and in-laws started demanding a motor-cycle and since that was not given to them by her parents, they started harassing her and subjected her to all sorts of cruelty which led to the prosecution of the non-applicants Nos. 2 to 4 under Section 498-A read with S. 34 of the Indian Penal Code. She was the solitary witness examined on behalf of the prosecution. The trial Court after considering her evidence recorded a finding that offence under Section 498-A of the Indian Penal Code has not been made out and consequently acquitted the non-applicants. The State has not challenged the order of acquittal. However, the applicant has challenged the same by way of revision before this Court.

2. Mr. Deshpande has taken me through the Judgment and the evidence of the applicant. After going through her evidence, I find that her evidence is not consistent. According to her, the brother of her husband had on one occasion poured kerosene oil on her body and set her on fire which resulted in serious injuries to her person. It is surprising that the brother of the husband of the applicant has not been joined as an accused in the proceedings. Moreover, the incident of burning appears to have taken place within two months from the date of the marriage. If it is so, it will certainly be prior to 25-12-1983 when Section 498-A, Indian Penal Code, came into force. In view of this, the incident of burning would be of no assistance to the prosecution to prove an offence under Section 498-A even if it is conceded in favour of the prosecution that the brother of non-applicant No. 2 poured kerosene oil on the applicant in pursuance of the demand of the family for a motorcycle.

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 The proceedings were withdrawn by her in view of the assurance that was given by her husband that he would take her and keep her with him.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.

4. I am told by Mr. Deshpande that the applicant has already filed proceedings under Section 125, Criminal Procedure Code, for maintenance. He apprehends that certain observations which are made in the Judgment may influence the trial Court while disposing of the application under Section 125, Criminal Procedure Code. I do not see any justification for this apprehension because the above observations are made in regard to offence under Section 498-A, Indian Penal Code. I have no doubt that the Magistrate shall decide the application under Section 125, Criminal Procedure Code, without being influenced in any way by the observations which are made in the present Judgment. The present revision application is dismissed. Rule is discharged.

5. Petition dismissed.