

GAHC010269472022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1345/2022

DEBAJIT DEORI
S/O LATE DIGAMBAR DEORI, R/O MORAN PEOLI NAGAR, P.O. AND P.S.-
MORANHAT, DIST-DIBRUGARH, ASSAM, PRESENT ADD- HOUSE NO. 15,
MADHAB PATH BYE LANE NO. 2, SAWKUCHI, GORAMARA, P.S.-
BASISTHA, GUWAHATI-781040, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:HELENA HEREH
D/O UNKNOWN
R/O B5
BLOCK II
SHANTI PLAZA
JATIA
KAHILIPARA
P.S.-DISPUR
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

12.03.2024

Heard Mr. A.M. Bora, learned Senior Counsel, assisted by Mr. D.K. Baidya, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, appearing for the State respondent. Though the name of the respondent No. 2 counsel's has been reflected in the cause-list, none appears when the matter has been called.

This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 for quashing of the FIR dated 29.09.2022, in connection with Dispur P.S. Case No. 2189/2022.

On 28.09.2022, the informant/respondent No. 2 lodged an FIR before the Dispur police station alleging *inter-alia* that the present petitioner had got married with her in the year 2008, by concealing the actual fact that he had already been married with another lady and that the entire scenery has come into the picture after spending two and a half years while she had conceived.

It is further alleged that the petitioner suddenly stopped providing food and shelter to her and her child.

It is further alleged that in the last few months the behaviour of the petitioner has changed and the petitioner compelled her to withdraw the name of the petitioner from all the documents, certificates etc.

It is further alleged that the petitioner frequently threatened her and her family members.

Mr. A.M. Bora, learned Senior Counsel for the petitioner submits that there is no material of any cruelty committed by the petitioner on the informant as defined under Section 498A and as such Section 498A is not attracted in the instant case.

He further submits that Section 498A of IPC is only attracted against the husband or a relative of the husband and in the instant case, the petitioner is not the husband of the informant.

He further submits that the provisions of Section 494 of the IPC are also not attracted against the petitioner, as he had not married the informant or any other person and has only married his own wife.

He further submits that the provisions of Section 506 IPC are also not attracted against the petitioner inasmuch as he has never criminally intimidated the informant.

He further submits that Section 494 and 506 are non- cognizable offences and hence cannot be registered without the prior permission of the Magistrate in terms of Section 155 (2) of the Cr.P.C.

Mr. D. Das, learned Additional Public Prosecutor, Assam, on the other hand, fairly submits that though the ingredients of Section 498A *prima-facie* are not attracted in the face of the averments made in the FIR, the ingredients of Section 494 and 506 are attracted.

I have heard the submissions made at the bar and have perused the materials available on record.

From the materials available on record, it appears that the petitioner was present in the spot.

Section 498A IPC is extracted herein below for ready reference:-

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.

A perusal of the aforesaid provisions indicates that it is against the husband or its family members against whom punishment for cruelty is provided.

Reference is made to the decision of the Apex Court in the case of "***Kantilal Martaji Pandor Vs. State of Gujarat***" reported in (2013) 8 SCC 781. Paragraphs 13, 14 and 15 of the aforesaid judgment is reproduced herein for ready reference:-

13. It will be clear from the language of [Section 498A, IPC](#), that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which

may extend to three years and shall also be liable to fine. The Explanation under [Section 498A](#) defines "cruelty" for the purpose of [Section 498A](#) to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand.

14. The first limb of clause (a) of the Explanation of [Section 498A](#), IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commit suicide and hence liable for the offence of abetment of suicide under [Section 306](#), IPC, the High Court has given a clear finding in paragraph 13 of the impugned judgment that the conviction of the appellant under [Section 306](#), IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under [Section 306](#), IPC. This part of the finding has not been challenged by the State in appeal before this Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any wilful conduct which was of such a nature as is likely to drive the deceased to commit suicide.

15. The second limb of clause (a) of the Explanation of [Section 498A](#), IPC, states that cruelty means any wilful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under [Section 498A](#), IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under [Section 498A](#), IPC. The relevant

findings of the High Court in paragraph 15 of the impugned judgment are extracted hereunder:

"As discussed earlier, permitting to enter his first wife in the house of deceased Amariben with new born child, is an act of the appellant – accused, which can be said to be a cruel act. The document Exhibit 10 indicates that she was financially exploited and the demand of money were made by the appellant – accused frequently. She has stated that on account of this, she was falling in starving. It is not in evidence that this Court can notice on one fact based on biological reasons assigned that the pregnant lady or lady, who has given birth to child, need more food, as such women are feeling more hungry then other normal women. She was facing very much financial problem and there should be possibility to go into depression and the present appellant – accused was the responsible person for creating this situation. The deceased was dropped woman, but self-respect is privilege of each individuals. The accused depended on the income of deceased Amariben after performing second marriage with her and was under legal as well as moral obligation to see that she may be treated well and may not be felt to insult or ignore. It is settled position that the cruelty includes mental cruelty, physical marks falls over the body are not required to be proved by the prosecution. The date of the application received by the police is 26.3.1992 and the evidence of PW-1 also show that on 26.3.1992 the appellant-accused had come to the school to inquire whether the deceased Amariben had made an application to the Principal of school or not. He must have been frightened that the deceased may complain genuinely to the school authority and Government and he may lose the job or at least, may invite some departmental action, so anxiety of the appellant-accused is found, which is exposed in the deposition of PW-1. When the deceased Amariben felt in creating apprehension in the mind that she may be killed by

her husband is sufficient to conclude that the wife must have been treated with cruelty either mentally or physically or both types of cruelty and that too frequently made otherwise the defence ought to have prove that she was a patient of depression. No such suggestive evidence made to the school teacher or other witness including mother. Meaning thereby, there is sufficient evidence to show that the deceased was treated with cruelty and that had led her to frustration and thereafter, depression, this is not an act of commission of a lady with child. She had decided to jump into the well leaving the child and accused behind, therefore, the act of the suicide appears to be intentional act to get rid of the frequent insult, ignorance and exploitation. The learned Trial Judge has rightly linked the accused with the offence punishable under [Section 498A](#). There is no error in evaluating the evidence so far as cruelty is concerned.

Reference is also made to the decision of the Apex Court in "***U. Suvetha Vs. State***" reported in (2009) 6 SCC 757. Paragraphs 7, 8 and 9 of the aforesaid judgment is reproduced herein for ready reference:-

"7. 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.

8. The 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.

9. 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.

In the present case, the petitioner is already married to another person and as such the ingredients of Section 498A *prima-facie* is not made out.

Thus, it appears that further proceedings in connection with the FIR dated 29.09.2022 under Section 498A of IPC is not justified.

As such further proceedings under section 498A of IPC is not justified. In view of the above, the FIR dated 29.09.2022 in connection with Dispur P.S. Case No. 2189/2022 so far relating to the registration of the said FIR under section 498A of IPC is concerned, the same is set aside and quashed to that extent.

However, the FIR indicates that there are allegations which constitute offences under section 494 and 506 of IPC. Section 155(2) of the CrPC provides that "*no police officer shall investigate a non cognizable offence case without the order of a Magistrate having power to try such case or commit the case for trial*".

It appears that the FIR in the instant case has been registered under section 494 and 506 of IPC which are non cognizable offences along with section 498A of IPC which is cognizable offence and hence the procedure

as laid down under section 155(2) of the CrPC was not followed at the time of registration of the FIR.

As such, it is provided that in respect of the offences under section 494 and 506 of IPC are concerned, it is open for the police authorities to proceed further in respect to the said offences in accordance with law.

With the aforesaid directions and observations, this criminal petition stands disposed of.

Interim order shall stands vacated.

JUDGE

Comparing Assistant