

THE HIGH COURT OF TRIPURA
AGARTALA

CRL PETN 06 of 2015

1. Shri Malay Bhowmik

S/O. Shri Shimalendu Bikash Bhowmik,

2. Shri Shimalendu Bikash Bhowmik

S/O. Late Srish Chandra Bhowmik,
Both residents of Amtali Laxman Para,
P.O. & P.S. Amtali,
District-Sepahijala, Tripura.

.....Petitioners.

- V e r s u s -

1. The State of Tripura

2. Smti.Tanvita Biswas(Bhowmik),

wife of Shri Malay Bhowmik, daughter of Shri Sailendra
Kishore Biswas, resident of Chanban, P.O.& P.S. R.K. Pur,
Sub-Division-Udaipur, District-Gomati, Tripura.

..... Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioners : Mr. S. Lodh, Advocate.

For the respondent : Mr. A. Ghosh, P.P.
No.1.

For the respondents : Ms. K. Roy, Advocate.
No.2.

Date of hearing & : 13.07.2014.
delivery of
Judgment & order

Whether fit for reporting : Yes.

JUDGMENT & ORDER (ORAL)

This petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Cr.PC') is directed against the order dated 09.01.2015 passed by the

Learned Sub-Divisional Judicial Magistrate, Bishalgarh, West Tripura whereby, he dismissed the petition filed by the petitioner-accused in which it was alleged that there was no material to frame charge against the petitioner under section 498A IPC.

2. The case against the petitioners is based on the written complaint made by the complainant to the Officer-in-Charge, Women Police Station, Udaipur, Gomati Tripura on 17.01.2014.

3. In the complaint, five persons was shown as accused and the complaint reads as follows:-

"Sir,

With due respect I beg to state that the informant is residing in the State and she is peace loving and law abiding housewife, and the accused person No.1 is her legally married husband, the accused person No.2 is the father-in-law of the informant, and the accused persons No.3, 4 & 5 are the sister-in-law of the informant and husbands of sisters-in-law of the informant.

It is stated that on 14.07.2013, the marriage between the informant and the accused person Bo.1 was solemnized as per Hindu rites and customs. In that marriage, the parents of the informant by borrowing money, gave Rs.50,000/- in cash, one motor cycle (Hero Honda Glamour), Golden chain, ring to accused person No.1, Golden Neckless, Har, bangles, chur, two golden churi, mantasha, ear ring, Box Khat, Alna, Tea Table, Dressing Table, VIP Sofa Set, Showcase, Steel Almirah, LCD TV, dress materials, utensils, i.e., in total worth Rs.10,00,000/-.

After the marriage , the informant went to the house of the accused person No.1, and on 17th July, 2013, i.e., on the day of Boubhat, the informant fell ill, and accordingly, she was taken to B.R. Ambedkar Hospital for her treatment, and on that day she was released from the hospital. On that date at night, she again fell ill, and the accused persons informed the parents of the informant. On arrival, the father of the informant found that the accused persons did

not take any steps for her treatment. On the other hand, all the golden ornaments were removed. At that time, the father of the informant took her in ILS Hospital and treated her.

After release from hospital, when she went to the house of her inlaws, all the accused persons drove her out from the house, and told that as the informant is sick, they would again organize marriage of accused person No.1. Finding no other alternative, the informant came to her parental home, and informed entire incidents. Thereafter, the relatives of informant tried to send her in her in-laws house. On 26.07.2013, the informant and her uncle of went to the house of accused persons, and the accused person by abusing filthy language drove them out from their house, and told them that as the informant is a sugar patient they would not treat her as wife of accused person No.1, and they would again organize marriage of accused person No.1. Thereafter, the informant and her uncle returned to home.

Thereafter, on several occasions the informant tried to restore the relation with the accused person No.1. On 17.11.2013, the informant convened a village meeting at Laxmanpara with the local people, and in that meeting the accused person No.1 & 2 told that accused person No.1 is not interested to maintain relation with the informant as husband and wife, and that time, the local people advised her to take legal action.

On 27.12.2013, the accused person Nos. 1,2,3 & 4 by a vehicle, came to the house of the father of the informant, and by threatening the informant and her father they told that they would not accept the informant as wife of accused person No.1, and if through Panchayat or other means, they send the informant, they would kill her.

The informant tried her level best to restore the relation, but all her efforts went on vain, and finding no other alternative, she is approaching your honour to get justice.

So you are requested to investigate the case and thereafter punish the accused persons. There are witnesses, and the informant can supply the names of the witnesses.

VERIFICATION

After perusing the complaint, it is found that the same is written as per my version and I put my signature.

17.01.2014

Yours faithfully,

**Sd/Tanvita Biswas Bhowmik
Mobile No.9612590861"**

4. Mr. S. Lodh, learned counsel for the petitioners submits that if this entire complaint is taken to be

absolutely true then also the petitioners cannot be convicted of having committed an offence punishable under section 498A IPC and therefore, the question of framing a charge of under Section 498A IPC does not arise.

5. On the other hand, Ms. K. Roy, learned counsel submits that the allegations clearly indicate that the complainant has been treated with cruelty within the meaning of Section 498A IPC and therefore, the petition deserves to be rejected and charge should be framed against the accused persons.

6. The gravamen of the complaint is that soon after the marriage on the day of 'Bhoubhat', the complainant - wife fell ill and she was taken to the hospital. It is alleged that according to the father of the complainant the accused persons did not take proper steps to get her treated. The father admittedly took her to the ILS Hospital and she was treated there. After her release from the hospital she was driven out of the house by the accused persons including the petitioner herein. They told her that she was a sick woman and therefore the marriage of the husband would be organized with some other healthy lady. The complainant thereafter came back to her parental house. Other relatives intervened to get the matter settled but

when the complainant along with her uncle went to her matrimonial home she was driven out of the house and filthy language was used against her. It was also alleged that since she was a patient of Diabetes, the husband would be got married to some other person. All these occurrences took place in July, 2013. The last occurrence is of December, 2013 and with regard to this occurrence, it is stated that all the accused persons came to the house of the complainant and threatened her and her father that they would not accept the complainant as the wife of the accused No.1.

7. The issue that arises is whether these allegations are sufficient to constitute cruelty within the meaning of section 498A IPC, which reads as follows:-

"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. As far as this case is concerned, we are not concerned with Clause (a) of the explanation since admittedly there is no demand of dowry or any other valuable security. This Court is only concerned with Clause (b) of the explanation.

9. On behalf of the complainant, Ms. K. Roy has placed reliance on the judgment of the Karnataka High Court in ***State of Karnataka vs. Veerabhadrapa and anr. : 2001 (4) Crimes 590*** and the Bombay High Court in ***Mithailal and others vs. State of Maharashtra : 1993 CRI.L.J. 3580*** and the Apex Court in ***Satpal vs. State of Haryana : 1999 CRI.L.J. 596***.

10. As far as ***Satpal's (supra)*** case is concerned the Apex Court has not decided any question of law there. It has only held that as far as the offence under section 498A IPC is concerned, it appears that there is direct and convincing evidence that the deceased have been humiliated and treated with cruelty on some occasions. This is a finding of fact based on the evidence led in that case and can by no means be said to be a pronouncement of law.

11. The Bombay High Court in ***Mithailal's (supra)*** Case was dealing with a matter where the appellant husband had been convicted by the Trial Court of having murdered his wife. To prove the motive, the prosecution led evidence to show that the husband had treated his wife with cruelty and it was in this context that certain observations have been made that the husband was not providing necessities of existence like food etc. to the wife and was acting with cruelty towards his wife. In my view, this judgment has no application to the facts of this case because in that case the question was not what is cruelty within the meaning of section 498A IPC, but the Court was relying upon a chain of circumstances to show that the husband had acted cruelly against his wife prior to murdering her.

12. As far as the judgment in ***Veerabhadrapa (supra)*** Case is concerned, that no doubt supports the case of the complainant-respondent. In that case the Division Bench of the Karnataka High Court held that under Section 498A IPC, it is not necessary that the cruelty should be related to dowry. The Karnataka High Court held that the act of the husband in asking the deceased to carry stones and mud and not providing her with food and

clothing was an act of cruelty. At the same time, it must be remembered that the Karnataka High Court was dealing with a case where the wife had actually committed suicide and the question was whether she was forced to commit suicide because of the acts of cruelty committed upon her by the husband or not.

13. On the other hand, Mr. S. Lodh, learned counsel has relied upon two judgments of the Apex Court. In ***Manju Ram Kalita vs. State of Assam : (2009) 13 SCC 330***, the Apex Court after quoting the provisions of 498A IPC held as follows:-

"...Cruelty has been defined by the Explanation added to the section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment.

14. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the Explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :

(i) any "wilful" conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any "wilful" conduct which is likely to cause grave injury to the woman; or

(iii) any "wilful" act which is likely to cause danger to life, limb or health, whether physical or mental of the woman."

14. The Apex Court therefore came to the conclusion that to constitute cruelty within the meaning of Clause (b) of the explanation to Section 498A IPC, cruelty must be either wilful conduct of such a nature as is likely to drive

the woman to commit suicide or wilful conduct which is likely to cause grave injury to the woman or wilful conduct which is likely to cause danger to life, limb or health whether physical or mental of the woman.

15. In ***Kantilal Martaji Pandor vs State of Gujarat and another : (2013) 8 SCC 781***, this question again came up for consideration before the Apex Court.

Dealing with this issue, the Apex Court held as follows:-

"13. It will be clear from the language of Section 498-A 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 498-A defines "cruelty" for the purpose of Section 498-A 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 498-A 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 para 13 of the impugned judgment (Kantilal Mariaji Pandor v. State of Gujarat, Criminal Appeal No. 294 of 1994) 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.

16. It may be pointed out in that case one of the circumstances which was relied upon by the prosecution to establish cruelty was that the first wife was permitted to enter the house of the deceased Amriben (the 2nd Wife) along with the new born child and this itself was an act of cruelty on the part of the husband. The Apex Court held that this does not amount to cruelty, within the meaning of Section 498A.

17. Cruelty can have different meanings. In general parlance cruelty may be given a wider interpretation. Cruelty for the purpose of grant of Divorce will have a totally different meaning. As far as section 498A IPC is concerned, cruelty has been defined under section 498A IPC. We are dealing with a Criminal Offence and when the definition of cruelty is given then the Court can neither expand nor restrict the meaning of the word cruelty. Cruelty under Section 498A means wilful conduct which will force a woman to commit suicide. Obviously that is not attracted in this case and there is not even an allegation in this regard. Cruelty may also occur where the conduct of the husband by which grave injury is caused or is likely to be caused to a woman. That is also not attracted in this case.

18. The entire case of the complainant is based on the ground that by the wilful act of the husband in not accepting his wife it would cause danger to life, limb or health whether physical or mental of the wife. The Apex Court has held that every act which is improper or which may even be termed as cruel in general parlance may not be cruelty within the meaning of section 498A. If a husband misbehaves with his wife, it may be a cruel act entitling the wife to judicial separation or divorce, but that may not be cruelty within the meaning of Section 498A IPC unless it is shown that there is either grave injury or the act was likely to cause danger to the life or health of the women whether physical or mental. If a woman is tortured whether physically or psychologically, the cruelty can relate to harm to her body or to her mind. But it will have to be alleged and proved that such conduct would cause harm either physical or mental torture. The allegations in the complaint which have been quoted verbatim in the earlier portion of the judgment do not even indicate that the complainant has complained that the acts of the respondent were likely to cause any harm or injury to her whether physical or mental.

19. While interpreting any provision, the Courts must take a pragmatic and practical view. In a domestic home there is always likelihood of disputes arising. Relationship between husband and wife cannot be smooth throughout their lives. There are ups and downs in every marriage. To construe cruelty the behavior must be of such a nature that the woman would be driven to either commit suicide or the conduct should be such as would cause grave injury to the woman. The legislature in its wisdom has chosen to put the word grave before injury. To fall within sub-clause-3 the willful act should be such as to cause danger to the life, limb or health whether physical or mental of the woman.

20. This Court is not at this stage deciding whether the allegations are true or not. At this stage they have to be accepted to be the gospel truth. Accepting the allegations to be true then also, in my humble opinion no offence under section 498A IPC is made out because the reading of the complaint does not show that the complainant apprehended any danger to her life, limb or health whether mental or physical. The act of the accused persons if true may be a deplorable act. It may be highly immoral or improper or even cruel within the meaning of the Hindu Marriage Act to drive the wife out of the home

and to tell the wife that since she is a patient of diabetes the husband would get married to some other woman. These acts may constitute other offences but they do not constitute an offence under section 498A IPC.

21. In view of the above discussion, I am of the clear cut view that the learned trial court gravely erred in rejecting the application filed by the accused husband. The petition is accordingly allowed and it is held that even if the complaint is taken to be wholly true, no offence under section 498A IPC is made out and therefore, the proceedings before the Trial Court are quashed.

22. The petition is disposed of accordingly.
Send down the LCRs forthwith.

CHIEF JUSTICE

Sabyasachi / sima