

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1457 of 2008

Ilayaraja

.. Petitioner/petitioner
Accused No.4

Vs.

1.State rep. by
The Inspector of Police
All Women Police Station
Tirupattur
Vellore District
(Crime No.2/2006)

2.A.Deepalakshmi

.. Respondents/Respondents
Complainant

(The second respondent is
impleaded as per the order
of this Court, dated 18.02.10
in M.P.No. 1 of 2010)

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C.
against the order dated 10.09.2008 made in C.M.P. No. 774 of 2008 in
C.C.No.84 of 2006 on the file of the Judicial Magistrate No.I, Tirupattur,
Vellore District.

For Petitioner : Mr. S.Vijayakumar

For Respondents : Mr. V.Arul
Government Advocate (Crl.Side)
for first respondent

ORDER

This Criminal Revision Case is filed by the petitioner/accused No.4
against the order of dismissal of the petition in C.M.P. No. 774 of 2008
in C.C.No.84 of 2006 on the file of the Judicial Magistrate No.I,
Tirupattur, Vellore District, dated 10.09.2008, which was filed seeking to
discharge him from the charge under Section 498-A IPC

2. The case of the prosecution is that the second respondent/defacto
complainant/wife has lodged a criminal complaint against her
husband/accused No.1, father-in-law and mother-in-law/accused Nos. 2 and 3
respectively and petitioner/accused No.4, who is the friend of accused
No.1, alleging that they have committed an offence punishable under
Section 498-A IPC. On the basis of the complaint lodged, the first
respondent police registered a case in Cr.No.2 of 2006 and after
investigation, a final report was filed before the learned Judicial
Magistrate No.I, Tirupattur, Vellore District, for the alleged offences
under Sections 498-A, 406 and 506 (ii) IPC against accused Nos.1 to 3 and
accused No.4 was charged for the offence under Section 498-A IPC.
Subsequently, the case was taken on file in C.C.No.84 of 2006 on the file
of the Judicial Magistrate No.I, Tirupattur, Vellore District. Alleging

that the petitioner/accused No.4 cannot be charged for the offence under Section 498-A IPC, when he is not a relative, but, a friend, has preferred a discharge petition before the Judicial Magistrate No.1, Tirupattur, Vellore District, in C.M.P.No.774 of 2008, but, the same was dismissed by order dated 10.09.2008. Aggrieved against the order passed by the Trial Court, the accused No.4 has preferred this Criminal Revision Case.

3. Mr.S.Vijayakumar, learned counsel appearing for the petitioner/accused No.4 vehemently contended that the Court below has not taken into consideration of the fact that the petitioner is not a relative, but, he is only the friend of accused No.1. He would further submit that the only allegation made against the accused No.4 even in the F.I.R. is that the husband of the defacto complainant viz., accused No.1 was doing business along with the petitioner/accused No.4/friend of accused No.1 and in the course of the said business transaction, it is alleged that the husband demanded huge money for investment in the business, but, nowhere, it is indicated that the petitioner, who is the friend of accused No.1, neither instigated nor harassed nor demanded dowry from the defacto complainant. He would further point out that Section 498-A IPC will not apply to a third party, especially, to a person, who is not a relative. Here is a case, where the petitioner is only the friend of accused No.1 and the friend will not come within the purview of Section 498-A IPC. In this connection, learned counsel relied on the judgment of the Hon'ble Apex Court reported in 2009(2) MWN (Cr.) 188 (SC), U.Suvetha vs. State by Inspector of Police and another, wherein, the Apex Court has clearly held that even a "girl friend", "concubine", "paramour" or a person, who is living with another lady, whom he has not married, will not come within the purview of "relative" for making out an offence under Section 498-A IPC. The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. He would further add that the essential ingredient for attracting an offence under Section 498-A IPC will include the cruelty, coercing, direct involvement and threatening to meet any unlawful demand for any property and when there is no such specific allegation levelled against the petitioner, the Trial Court ought to have discharged the petitioner from the charge under Section 498-A IPC and hence, the Criminal Revision Case.

4. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the first respondent would contend that when there is clear indication in the F.I.R. itself regarding the direct involvement of the petitioner/accused No.4 in the alleged commission of the offence, merely because, he is not a relative, that may not be a reason to discharge him from the charge. He would further add that there is evidence available to support in respect of the involvement of the petitioner in the alleged offence and it can be decided only during the course of trial and at this stage, it is too premature to discharge the petitioner from the charge and therefore, the Trial Court has rightly dismissed the discharge petition.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. This Court has perused the entire materials available on record. On a careful reading of the F.I.R., it is seen that in the F.I.R., it is stated as follows:-

“...என்னை 2004ம் வருடம் சிதம்பரம் அண்ணாமலை பல்கலை கழகத்தில் 1,50,000/= யை செலவு செய்து B.Ed. படிக்க வைத்தார். அந்த சமயத்தில் என் கணவர் அவரின் நண்பர் நாமக்கல்லைச் சேர்ந்த அளையராஜா என்பவருடன் கூட்டாக லாரி தொழில் செய்கிறேன் எனச் சொல்லி அடிக்கடி கல்லூரிக்கு வந்து பணம் வாங்கித் தரும்படி மிரட்டினார்.....”

Even on a clear reading of the above statement, no where, it is stated that the husband came to the College along with the petitioner and threatened her to give money. In the F.I.R., it is only stated that her husband is doing business along with the petitioner/Ilayaraja, therefore, the direct involvement is not there.

7. On a perusal of the charge sheet, it is seen that the only allegation made against the petitioner/accused No.4 is that accused No.4, who is the friend of accused No.1, tortured the petitioner by demanding dowry. In the charge sheet, there is no indication as to, when the petitioner made demand of money or how he made the demand of money and also as to whether the petitioner made the demand of money along with accused No.1/husband or individually and no witness has been cited in this regard. In the charge sheet, it is stated as follows:-

“... A4 who is the friend of he also tortured the victim in demanding of dowry.

As the accused persons A1 to A3 harassed and intimidated to kill the victim for the demand of dowry and took the belonging and jewels and not yet returned back to the victim they committed offence u/s. 498-A and 506 (ii) and Sec. 406 I.P.C. A4 committed the offence of Sec. 498-A IPC.”

8. At this juncture, it is relevant to refer to Section 498-A of the Indian Penal Code, which reads as under:-

“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, 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 willful 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 meet such demand.”

9. When we refer to Section 498-A IPC, the words used are, husband or the relative of the husband of a woman subjecting her to cruelty, no where, it is stated any person or a friend or a third party. The term “relative” has been clearly defined by the Hon'ble Apex Court by placing referring to law lexicon and dictionary in the judgment reported in 2009 (2) MWN (Cr.) 188 (SC), U.Suvetha vs. State by Inspector of Police and another. It is worthwhile to refer to paragraph Nos.10, 11, 12, 14, 15, 17, 18 and 21 of the said judgment, in which, the Hon'ble Apex Court has held as under:-

"...

10. 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 of 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.

11. 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 498-A 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 498-A of the Indian Penal Code.

12. In the absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word 'relative' would depend upon the nature of the statute. It principally includes a persons related by blood, marriage or adoption. The word 'relative' has been defined in P.Ramanatha Aiyar: Advanced Law Lexicon - Volume 4, 3rd Edition as under:-

"Relative, "RELATIVE" includes any person, related by blood, marriage or adoption. [Lunacy Act].

The expression "RELATIVE" means a husband, wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the Deceased,-
(a) the wife or husband of the Deceased;
(b) the father, mother, children, uncles and aunts of the Deceased, and

(c) any issue or any person falling, within either of the preceding sub-clauses and the other part to a marriage with any person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if, -

(a) they are the members of a Hindu undivided family, or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means -

(a) The mother, father, husband or wife of the individual, or

(b) a son, daughter, brother, sister, nephew or niece of the individual, or

(c) a grandson or grand-daughter of the individual, or

(d) the spouse or any person referred to in sub-clause (b) - [Income Tax Act].

"RELATIVE" means -

(1) spouse of the person;

(2) brother or sister of the person;

(3) brother or sister of the spouse of the person;

(4) any lineal ascendant or descendant of the person;

(5) any lineal ascendant or descendant of the spouse of the person.

[Narcotic Drugs and Psychotropic Substances Act]."

Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean:

"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference: relevant; pertinent (usually foll. By to): two facts relative to the case. 9. correspondent; proportionate. 10. depending for significance upon something else: "better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor."

13....

14. A Three Judge bench of this court however, in <https://hcservices.ecourts.gov.in/hcservices/> Shivcharan Lal Verma and another v. State of M.P., 2002 (2) Crimes 177 SC : JT (2002) 2 SC 641, while interpreting Section 498-A of the Indian Penal Code, in a case where

the prosecution alleged that during the life of the first wife Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined:

"One, whether the prosecution under Section 498-A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498-A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498-A of IPC."

15. A Two Judge Bench of this court however, in *Reema Aggarwal v. Anupam*, 2004(3) SCC 199, while construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating:

"....If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions.. Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages 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 Section 304-B or 498-A, IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

17. Herein, as noticed hereinbefore, relationship of the appellant with the husband of the first informant, is said to have been existing from before the marriage. Indisputably they lived separately. For all intent and purport the husband was also living at a separate place. The purported torture is said to have been inflicted by the husband upon the first informant either at her in-law's place or at her parents' place. There is no allegation that appellant had any role to play in that regard.

18. By no stretch of imagination a girl friend or even a concubine in an etymological sense would be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

19.

20. ...

21. Applying the principles laid down in various decisions referred to above, we have no doubt, in our mind, that the appellant is not a relative of the husband of the first informant."

10. In the judgment cited supra, the Hon'ble Apex Court has clearly held that even a "girl friend", "concubine", "paramour" or a person, who is living with another lady, whom he has not married, will not come within the purview of "relative" for making out an offence under Section 498-A IPC. The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. Further, it is needless to point out that the term "relative" has not been defined in the Indian Penal Code. Further, there is no direct evidence to link the petitioner/accused No.4 with the charge under Section 498-A IPC. Apart from that, a plain reading of the judgment of the Trial Court makes it clear that the Trial Court has simply dismissed the discharge petition only on the ground that though the charge framed against accused No.4 for the offence under Section 498-A will not attract him, but, there are allegations levelled against him. The essential ingredients for attracting an offence under Section 498-A IPC 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. In my considered opinion, the mere allegations will not give rise to a charge, when the essential ingredients for attracting the offence under Section 498-A IPC, which includes the cruelty, harassment, coercion, direct involvement and threatening to meet any unlawful demand for any property, is not made out against the petitioner/accused No.4. Further more, in the light of the decision cited supra, admittedly, when the petitioner/accused No.4 is not a relative and he is only the friend of accused No.1, the framing of charge against the petitioner under Section 498-A IPC is liable to be set aside.

11. In the result, this Criminal Revision Case is allowed and the order passed by the Trial Court in C.M.P.No.774 of 2008 in C.C.No.84 of 2006, dated 10.09.2008, is set aside and the petitioner/accused No.4 is discharged from the charge levelled against him for the offence under

Section 498-A IPC. Consequently, connected Miscellaneous Petition is closed. Since, the Calendar Case is of the year 2006, the Trial Court is directed to dispose of the C.C.No.84 of 2006, on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

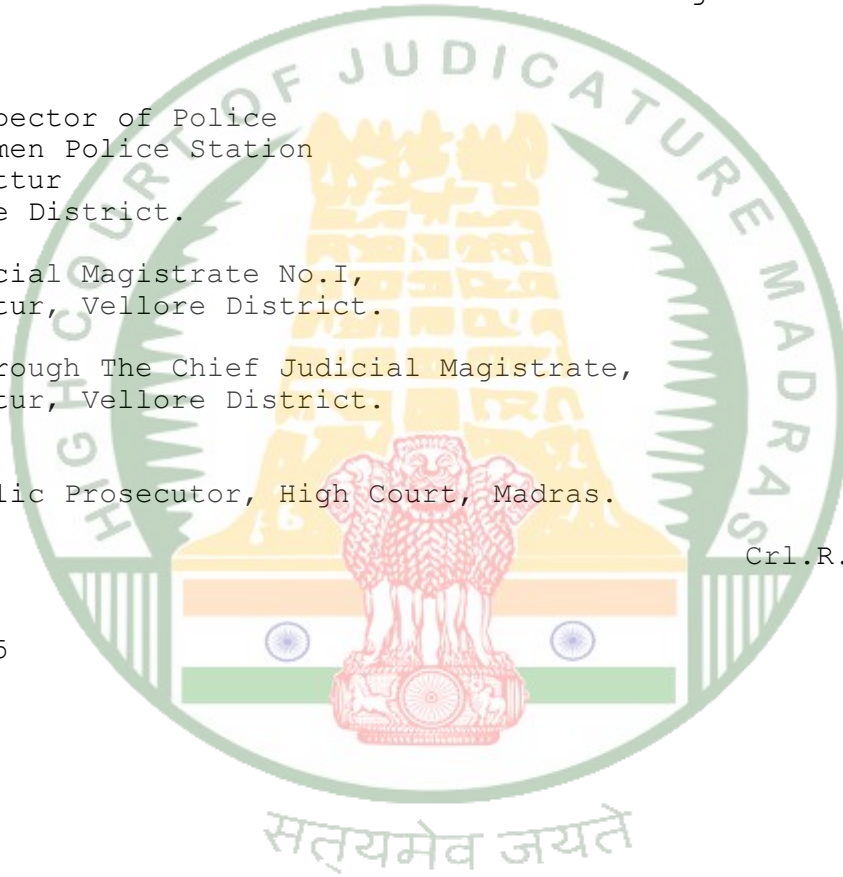
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To

1. The Inspector of Police
All Women Police Station
Tirupattur
Vellore District.
2. The Judicial Magistrate No.I,
Tirupattur, Vellore District.
3. -do- Through The Chief Judicial Magistrate,
Tirupattur, Vellore District.
4. The Public Prosecutor, High Court, Madras.

Crl.R.C.No.1457 of 2008

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Eu 09.07.15



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