

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42633 of 2013

Arising Out of PS.Case No. -3331 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Asha Devi daughter of Ram Chandra Rai, resident of village- Sharariya, P.S- Lalganj, District- Vaishali.
 2. Ram Chandra Rai son of Late Yodha Rai, resident of village- Sharariya, P.S- Lalganj, District- Vaishali.
 3. Deepak Singh @ Deepak Kumar Yadav son of Asha Devi, resident of village- Sharariya, P.S- Lalganj, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jaleshwari Devi @ Dahali Devi wife of Chandeshwar Rai, resident of village- Amritpur, P.S- Vaishali, District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan, Advocate
For the Informant : Mr. Ranjan Kumar Dubey, Advocate
For the State : Mr. Narendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing of the order dated 20.04.2013 passed by the learned Sub Divisional Judicial Magistrate, Vaishali in Trial No.3194 of 2013 arising out of Complaint Case No.3331 of 2012 by which finding a prima facie case to be made out under Section 498A of the Indian Penal Code (for short 'the IPC') the petitioners along with one Chandeshwar Rai have been summoned to face trial.

2. The complaint has been instituted with allegation that co-



accused Chandeshwar Rai, the husband of the complainant had developed extra marital relationship with the petitioner no.1 Asha Devi, daughter of petitioner no.2 Ram Chandra Rai and mother of petitioner no.3 Deepak Singh @ Deepak Kumar Yadav. On protest made by the complainant, her husband Chandeshwar Rai assaulted her and called other accused persons and with their assistance kicked her out of the matrimonial house after retaining her ornaments.

3. On the basis of the above allegation, after conducting enquiry under Section 202 of the CrPC, the learned Sub Divisional Judicial Magistrate vide order dated 20.04.2013 summoned the petitioners and aforesaid Chandeshwar Rai to face prosecution under Section 498A of the IPC.

4. A short but pointed argument has been advanced by the learned counsel for the petitioners that the petitioners cannot be prosecuted for the offence under Section 498A of the IPC since, admittedly, they are not the 'relatives' of the husband of the complainant. He submitted that a married lady or her relatives having extra marital relationship with a married man, who has no relationship with that lady cannot be prosecuted for the offence punishable under Section 498A of the IPC.

5. Fortunately, learned counsel for opposite party no.2 conceded that the petitioners are in no way related to the husband of



the complainant. He also conceded that existence of relationship between the accused husband and the other accused is a pre-requisite to constitute offence under Section 498A of the IPC.

6. However, learned Additional Public Prosecutor appearing for the State pleaded differently. He submitted that these are the questions of fact which can be determined by the learned Magistrate at an appropriate stage of the trial. He submitted that the impugned order summoning the petitioners to face trial is neither vitiated in law nor on facts.

7. I have heard learned counsel for the petitioners and perused the record.

8. In order to appreciate the point raised before the Court, I deem it apposite to refer to Section 498A of the IPC, which reads as under:-

“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 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 on account of failure by her or any person related to her to meet such demand.”

9. In order to constitute an offence punishable under Section 498A of the IPC following ingredients are necessary:-

- (a) A 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.

10. Thus, necessary ingredients of Section 498A of the IPC are that besides the husband, the other accused persons must be ‘relative’ of the woman’s husband.

11. The term ‘relative’ has not been defined in the IPC. In absence of any statutory definition to the ‘relative’ it must be given a meaning as is commonly understood.

12. In *U.Suvetha vs. State by Inspector of Police and Another [(2009) 6 SCC 757]*, Hon’ble Supreme Court observed:-

“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 granddaughter 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 person related by blood, marriage or adoption.”

13. In the said decision, the Hon’ble Supreme Court further observed:-

“By no stretch of imagination would a girlfriend or even a concubine in an etymological sense 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.”

14. In the present case, as noticed hereinabove, the petitioner no.1 is alleged to be a married lady living in relationship with the husband of the complainant. So far as the other two petitioners are concerned, it is alleged that they happen to be father and mother of petitioner no.1. By no stretch of imagination these three petitioners can be said to be ‘relative’ of the husband of the complainant.

15. In that view of the matter, in absence of one of the



essential ingredients of the offence, the impugned order whereby the petitioners have been summoned to face trial for the offence punishable under Section 498A of the IPC cannot be sustained.

16. Accordingly, the impugned order 20.04.2013 passed by the Sub Divisional Judicial Magistrate, Vaishali in connection with Tr. No.3194 of 2013 as far as the petitioners are concerned, is hereby quashed.

17. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.04.2017
Transmission Date	

