



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.(MD)No.6683 of 2011

and

M.P.(MD)No.1 of 2011

1.Subramani

2.S.Murugeswari

3.S.Sathish

... Petitioners

Vs.

1.The Sub-Inspector of Police,
All Women Police Station,
Dindigul.
(Crime No.12/2009)

2.M.Vennila

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to C.C.No.565 of 2010 on the file of the Judicial Magistrate Court No.II, Dindigul, filed by the first respondent in Crime No.12 of 2009 under Sections 498(A) and 506(i) I.P.C., and quash the same.

For Petitioners	:	Mr.Pinaygash for Mr.T.Lajapathi Roy
For R1	:	Mr.K.Anbarasan Government Advocate (Criminal side)
For R2	:	Mr.A.Hariharan

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.565 of 2010 pending on the file of the Judicial Magistrate Court No.II, Dindigul.

2.Facts of the case:

The petitioners herein/A2 to A4 are the father, mother and brother of A1. A1 viz., Muruganantham allegedly married the de-facto complainant and obtained Rs.2,00,000/- as a dowry and now, he refused to live with her and demanded a sum of Rs.5,00,000/- as additional dowry and threatened the de-facto complainant with dire consequences along with the petitioners. Therefore, the de-facto complainant lodged a complaint before the first respondent Police and the same was registered for the offences under Sections 498-A, 495 and 506(i) I.P.C.



3. The learned counsel for the petitioners submitted that the petitioners are in no way connected with the crime and they have not committed the offence punishable under Section 498-A I.P.C. The de-facto complainant did not marry the first accused and there is no proof to show that the de-facto complainant married A1.

4. In support of his submission, the learned counsel for the petitioner relied on the following decisions:

(a) U.Suvetha Vs. State by Inspector of Police and another reported in 2009 (2) MLJ (Cr1) 1079 (SC), wherein at paragraphs 20 to 22, it has been held as follows:

"20. We are, however, not oblivious of the fact that a learned Single Judge of the Kerala High Court in John Idiculla v. State of Kerala, [2005 M.L.J. (Cr1.) 841] relying on Reema Aggarwal v. Anupam (supra) gave a wider meaning to the word "second wife" to hold :-

"25. The test under Section 498-A IPC is whether in the facts of each case, it is probable that a woman is treated by friends, relatives, husband or society as a "wife" or as a mere "mistress". If from the pleadings and evidence the Court finds that the woman concerned is regarded as wife and not as a mere mistress, she can be considered to be a 'wife' and consequently as 'the relative of the husband' for purpose of Section 498-A IPC. Proof of a legal marriage in the rigid sense as required under civil law is unnecessary for establishing an offence under Section 498-A IPC. The expression "marriage" or "relative" can be given only a diluted meaning which a common man or society may attribute to those concepts in the common parlance, for the purpose of Section 498-A IPC. A second wife who is treated as wife by the husband, relatives, friends or society can be considered to be 'the relative of the husband' for the purpose of Section 498-A of IPC. If she inflicts cruelty on the legally-wedded wife of the husband, an offence under Section 498-A IPC will not lie against her."

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.

22. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed."



(b) Sunita Jha Vs. State of Jharkhand and another reported in 2011 (1) MLJ (Crl) 530 (SC), wherein at paragraphs 8, 9, 13 and 14, it has been held as follows:

8. The other question which fell for determination was if a husband was living with another woman besides his wife, whether the same would amount to "cruelty" within the meaning of Section 498A. It was held that if such other woman was not connected to the husband by blood or marriage, the same would not attract the provisions of Section 498-A I.P.C., although it could be an act of cruelty for the purpose of judicial separation or dissolution of marriage under the marriage laws, but could not be stretched to amount to "cruelty" under Section 498-A IPC.

9. While construing the provisions of Section 498-A IPC in the given circumstances, this Court observed that Section 498-A being a penal provision deserved strict construction and by no stretch of imagination would a girlfriend or even a concubine be a "relative", which status could be conferred either by blood connection or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

10. Section 498-A IPC, as extracted hereinabove, is clear and unambiguous that only the husband or his relative could be proceeded against under the said Section for subjecting the wife to "cruelty", which has been specially defined in the said Section in the explanation thereto. The question as to who would be a relative of the husband for the purpose of Section 498-A has been considered in detail in U. Suvetha v. State (supra). We are entirely in agreement with the views expressed in the said case and we agree with the submissions made on behalf of the appellant that the learned Judge of the High Court committed an error in bestowing upon the appellant the status of wife and, therefore, a member of Mukund Chandra Pandit's family. The doctrine of acknowledgement would not be available in the facts of this case. No doubt, there is direct allegation against the appellant of cruelty against the Respondent No.2, Asha Rani Pal, but as indicated in U. Suvetha v. State (supra), the same would enable the Respondent No.2 to proceed against her husband under Section 498-A I.P.C. and also against the appellant under the different provisions of the Hindu Marriage Act, 1955, but not under Section 498-A I.P.C.

11. The Appeal, therefore, succeeds and is allowed. The judgment of the learned Single Judge of the Jharkhand High Court impugned in this appeal is set aside and the cognizance taken against the appellant on 06.02.2006, by



the learned Sub-Divisional Judicial Magistrate, Dumka, under Section 498-A IPC, is hereby quashed.''

5.I have heard the learned Government Advocate (Criminal side) appearing for the first respondent on the above said submissions.

6.The learned counsel for the second respondent has also conceded to the legal position rendered by the Hon'ble Apex Court. However, the learned counsel submitted that though Section 498-A I.P.C. will not be applicable to the petitioners, they can be dealt with other provisions in the charge sheet. Accordingly, he prayed for dismissal of the Criminal Original Petition.

7.In the light of the decisions cited supra, I am inclined to delete Section 498-A I.P.C. in C.C.No.565 of 2010 pending on the file of the Judicial Magistrate Court No.II, Dindigul. Accordingly, Section 498-A I.P.C. in C.C.No.565 of 2010 pending on the file of the Judicial Magistrate Court No.II, Dindigul, is deleted. However, the learned Judicial Magistrate No.II, Dindigul, may proceed with C.C.No.565 of 2010 with regard to the offences viz., Sections 495 and 506(i) I.P.C. in accordance with law. In view of pendency of C.C.No.565 of 2010 from the year 2010, the learned Judicial Magistrate No.II, Dindigul, is directed to complete the trial within a period of three months from the date of receipt of a copy of this order and the personal appearance of the petitioners is dispensed with unless the learned Magistrate feels that their presence is required for the disposal of the case.

With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Judicial Magistrate No.II, Dindigul.
- 2.-do-Thro' Chief Judicial Magistrate, Dindigul District.
- 3.The Sub-Inspector of Police, All Women Police Station, Dindigul.
- 4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.T.Lajapathi Roy, Advocate, SR.No. 84677

+1CC to Mr.A.Hariharan, Advocate, SR.No. 84736

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