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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION NO. 132/2018

(1.Viraj s/o Prakash Joshi and others vs. State of Maharashtra and another)

AND

CRIMINAL APPLICATION NO. 643/2017

(1.Sonali w/o Nilesh Mahajan and another vs. State of Maharashtra and another)

.....
Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

.....
Mr. P R. Agrawal, Advocate for the applicants
Mr. I. J. Damle, Additional Public Prosecutor for non-applicant no.1-State
Mr. J.B. Kasat, Advocate for non-applicant no.2.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATED : 23rd April, 2018.

Heard.

Since the prayers made in these Criminal Applications are almost identical and the facts involved in the same are based on the allegations made by the non-applicant no.2-Aishwarya against the applicants in both the Criminal Applications in the Complaint lodged by her against them for the offence punishable under Section 498A of the Penal Code, they are heard together and are decided by this common order.

The applicant no.1- Viraj in Criminal Application No.132/2018 is the husband of the non-applicant no.2 Aishwarya. The applicant no.2 is the father of Viraj and the father-in-law of Aishwarya whereas, the applicant no.3

is the mother of Viraj and the mother-in-law of Aishwarya. Similarly, the applicant no.1 in Criminal Application No. 634/2017 Ms. Sonali is the sister-in-law of Aishwarya and the sister of Viraj, whereas the applicant no.2 in the said Criminal Application is the husband of Sonali and the son-in-law of applicant nos.2 and 3 in Criminal Application Nos. 132/ 2018.

A report was lodged by the applicant no.2- Aishwarya in the Police Station that after her marriage with Viraj on 13.12.2013, the applicants treated her well for quite some time and thereafter they had started ill-treating her. It is alleged that the applicants always chided the non-applicant no.2 that she was not able to beget a child and that she was not good-looking. It is alleged that Viraj told the non-applicant no.2 that he did not like her face. It is further alleged that all the applicants used to pressurize the non-applicant no.2 so that she should agree for the dissolution of the marriage between her and Viraj, by consent. It is alleged that one Manisha Mahatme used to tell the non-applicant no.2 that Viraj had an affair with a *Punjabi* girl and that the applicant no.2 should stop cohabiting with Viraj. It is alleged that the applicants always taunted the non-applicant no.2 for not bringing proper gifts at the time of marriage and other functions. It is alleged that Viraj wanted to start a business and for starting the same, he required some capital and therefore he had asked the non-applicant no.2 to arrange some amount from her parents. It is alleged that some meetings of the elderly persons were held with a view to consider whether the

disputes between the non-applicant no.2 and the applicants could be settled but without any success. It is alleged that on 23.2.2016 at about 11.30 pm, her in-laws had left the house without informing her. It is alleged that on the same night, the applicants asked her that she should agree for a decree of divorce by consent. On the basis of the said complaint, the first information report was registered against the applicants.

Shri Agrawal, the learned counsel for the applicants submitted that even if the allegations in the complaint lodged by the non-applicant no.2 are accepted at their face value, the offence of “cruelty” as defined under Section 498A of the Penal Code cannot be made out against the applicants. It is stated that under Section 498A of the Penal Code, cruelty could mean such a wilful conduct as is likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health. It is submitted that cruelty could also mean harassment of the woman with a view to coerce her or any person related to her to meet the illegal demand. It is submitted that both the clauses in explanation to Section 498A of the Penal Code cannot be invoked and even if the allegations in the first information report are accepted at their face value, the offence punishable under section 498A of the Penal Code cannot be made out against the applicants. It is submitted that the applicants in Criminal Application No.634/2017 are residing at Pune and away from the matrimonial home of Viraj and the non-applicant no.2 but still the non-applicant no.2 has roped in the said applicants in the

complaint filed by her, with a view to teach them a lesson. It is stated that since an offence punishable under Section 498A of the Penal Code cannot be made out against the applicants, even if the allegations in the first information report are accepted at their face value, the first information report registered against the applicants need to be quashed and set aside.

Mr. I.J. Damle, the learned Additional Public Prosecutor appearing for the non-applicant no.1-State submitted that on the basis of the report lodged by the non-applicant no.2, the first information report was registered against the applicants in both the Criminal Applications. It is submitted that it appears from the allegations in the complaint lodged by the non-applicant no.2 that the applicants were treating the non-applicant no. 2 with cruelty and were always pressurising her for the dissolution of the marriage between her and applicant no.1 Viraj. It is submitted that it also appears from the complaint that as applicant no.1 Viraj wished to start a business, he was demanding a large amount from the parents of the non-applicant no.2. It is stated that due to this allegation made by the non-applicant no.2 against the applicant no.1-Viraj, the first information report was registered against the applicants.

Shri J.B. Kasat, the learned counsel for the non-applicant no.2 submitted that it is apparent from the allegations in the complaint lodged by the non-applicant no. 2 that she was treated by the applicants with cruelty. It is

stated that the applicants had always humiliated her by calling her ugly and that she was not able to bear a child. It is submitted that when applicant no.1 Viraj wished to start a new business, he had demanded a large sum of money from the parents of the non-applicant no.2. It is stated that if investigation is made by the applicant no.1, certain more facts could be revealed.

We have perused the provisions of Section 498A of the Penal Code and have minutely perused the allegations made in the complaint lodged by the non-applicant no.2. According to non-applicant no.2 after her marriage, she was treated well by the applicants for quite some time but thereafter they started ill-treating her. It is alleged by the non-applicant no.2 that after some time the husband started humiliating the non-applicant no.2 by saying that she was ugly and that she was not able to bear a child. It appears from the allegations in the complaint that it is the case of the non-applicant no.2 that all the applicants were pressurizing her for ensuring that the marriage between her and Viraj is dissolved by a decree of divorce. It is alleged in the complaint that the applicants used to say that the parents of the non-applicant no.2 had not gifted articles as per the traditions and customs to the applicants in the ceremonies that were performed after the marriage. It is lastly stated in the complaint that Viraj wished to start a business and hence he had asked the non-applicant no.2 to arrange the amount from her parents for starting a business.

From a reading of the aforesaid allegations in the complaint, it is clear that “cruelty” as defined u/s 498A of the Penal Code cannot be made out against any of the applicants. Even if we accept the allegations levelled by the non-applicant no.2 in the complaint at their face value, the offence u/s 498A of the Penal Code cannot be made out against the applicants. The applicants in Criminal Application No.634/2017 are residing at Pune as the applicant no.1, sister of Viraj, was married to the applicant no.2 in 2002 and they are residing at Pune since then. Even if the allegations made by the non-applicant no.2 that the applicant no.1-Viraj and the other applicants used to call her ugly and tell that they do not like her, the same cannot be tantamount to ‘cruelty’ within the meaning of Section 498A of the Penal Code. That may be cruelty in a matrimonial dispute in proceedings filed by the articles under Section 13(1)(ia) of the Hindu Marriage Act or for that matter in other proceedings between the parties but saying that the wife is ugly or that the husband does not like her face would not be ‘cruelty’ within the meaning of Section 498A. Section 498A of the Penal Code defines cruelty in the explanation to the said provision. It would be necessary to refer to the provisions of Section 498-A of the Penal Code in this regard. The Hon’ble Supreme Court has time and again held that every act of cruelty that is inflicted by the husband or his family members on the woman would not be ‘cruelty’ within the meaning of the term, under section 498A of the Penal Code. Under section 498A of the Penal Code cruelty could mean only such wilful conduct which is likely to drive the woman to commit suicide or to

cause grave injury or danger to her life, limb or health. Even where a husband would say that the wife is not good looking and he does not like her face and *vice versa*, would not be such an act which would drive the other spouse to commit suicide or would not be an act which would cause grave injury or danger to life, limb or health – physical or mental. We find from the allegations made by the non-applicant no.2 that according to her she was only pressurized by the applicants to ensure that the marriage between her and the applicant no.1-Viraj should be dissolved. That would not be cruelty within the meaning of the term under section 498A of the Penal Code. Merely because the husband or his family members pressurize a woman for dissolution of the marriage, the wife may either leave the home or she may agree or disagree for the divorce but that would not be ‘cruelty’ within the meaning of the term in explanation “(a)” to Section 498A of the Penal Code. The other allegation made only against applicant no. 1-Viraj is that when he wished to start a new business he had asked the non-applicant no.2 to arrange for some money from her parents. It is apparent from the allegations in the complaint which we have minutely perused that the said allegation only speaks of the request by Viraj that Aishwarya should ‘arrange’ the money for his business from her parents. A request or say of the husband for arranging money for starting his business, as stated in the complaint lodged by the non-applicant no.2 would not show that she was asked to meet an unlawful demand. There is nothing in the complaint lodged by the non-applicant no.2 to show that the applicant no.1-Viraj desired

that his in-laws should compulsorily gift the money to him. The words used in the complaint are clearly that the parents of the non-applicant no.2 should arrange some money for the business of Viraj. In so many families we find that the parents of the daughter would help their son-in-law in establishing a business. There is nothing in the complaint to show that Viraj made the demand of money with a view to grab it. The allegations only speak of making an arrangement for some money for starting a business. We find from the complaint that even after the said alleged incident which took place some time in the year 2015, the non-applicant no.2 again went to reside in the matrimonial home on 3.1.2016 and it is the case of the non-applicant no.2 in the Complaint lodged by her that the applicants again started pressurizing her for the dissolution of the marriage. Apart from the fact that the allegation of pressurizing the non-applicant no.2 for the dissolution of the marriage and the alleged request for arranging some funds for the new business of Viraj, do not go hand in hand, we find that the allegations made in the complaint lodged by the non-applicant no.2 could not have resulted in filing of the first information report against the applicants for the offence punishable under Section 498A of the Penal Code. We find from the complaint lodged by the non-applicant no.2 that specific allegations are not made against any of the five applicants by the non-applicant no.2 and the allegations are general in nature, except the one made against the applicant no.1-Viraj that he had asked the non-applicant no.2 to arrange some money from her parents as he wished to start a business. Since 'cruelty' as defined

under section 498A of the Penal Code cannot be made out even if the allegations in the first information report are accepted at their face value, it would be necessary to quash and set aside the first information report registered against the applicants and proceedings arising therefrom, by following the law laid down by the Hon'ble Apex Court, in the case of State of Haryana and others vs. Bhajan Lal and others, reported in 1993 Supp(1) SCC 335.

Hence, for the reasons aforesaid, the Criminal Applications are allowed. The First Information Report registered against the applicants and the proceedings arising therefrom, are hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE