

SMT JUSTICE T.RAJANI
CRIMINAL PETITION No.8672 OF 2013

ORDER:

This Criminal Petition, under section 482 of Cr.P.C., is filed by the petitioner/accused seeking to quash the proceedings in C.C. No.293 of 2013, pending on the file of the Court of II Additional Judicial First Class Magistrate, Eluru, West Godavari District (for short, 'the trial Court'), registered for the offences punishable under Sections 498-A and 417 of I.P.C.

2. Heard learned counsel for the petitioner and the learned Public Prosecutor, appearing for the 1st respondent - State. None appears for the 2nd respondent – *de-facto* complainant, in spite of service of notice.

3. The complaint is to the effect that the petitioner, who is the husband of the complainant, has been harassing her for the demand of money and, on the previous day of the complaint, he brought one woman to the house and asked the complainant to get out from the house. He also took away Rs.3,00,000/- from the complainant.

4. Learned counsel for the petitioner submits that there is no marriage between the complainant and the petitioner and, hence, Section 498-A I.P.C. is not attracted.

5. The Supreme Court in a ruling reported in ***Nalla Thirupathi Reddy Vs. State of Telangana***¹ held as under:

“c) In A. Subash Babus case (3 supra), a learned single Judge of this High Court relying upon Shivacharan Lal Verma's case (1 supra) held that a second wife cannot maintain a complaint under [Section 498-A](#) I.P.C. It should be noted here that against the judgment in A. Subash Babus case (3 supra) Criminal Appeal was

¹ 2014 SCC Online Hyd 968

carried out to Hon'ble Apex Court in [A.Subash Babu vs. State of A.P.](#), wherein Hon'ble Apex Court while deprecating the learned Single Judges order quashing the proceedings in respect of the offence under [Section 498-A](#) I.P.C has observed thus: Para 16: This Court finds that the High Court has quashed the proceedings pending before the learned Magistrate under [Section 498-A](#) of IPC on the spacious ground that the marriage of the Appellant with the Respondent No. 2 is void and as Respondent No. 2 is not the wife, she was not entitled to lodge first information report with the police for commission of offence under [Section 498-A](#) IPC and on the basis of police report, cognizance of the said offence against the Appellant could not have been taken by the learned Magistrate. Such reasoning is quite contrary to the law declared by this Court in [Reema Aggarwal v. Anupam and others](#) ((2004) 3 SCC 199). After examining the scope of [Section 498-A](#) of the Indian Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there was no valid marriage the question of dowry does not arise, this Court speaking through Hon'ble Mr. Justice Arijit Pasayat, has held as under:

Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by [Section 498-A](#). The legislature has taken care of children born from invalid marriages. [Section 16](#) of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? 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 color 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/498A](#), 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.

With the above observations, Hon'ble Apex Court set aside the order of learned Single Judge insofar as his quashing the proceedings under [Section 498-A](#) I.P.C is concerned and held as follows:

Para 17: In view of firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was not justified at all in quashing the proceedings initiated against the Appellant under [Section 498A](#) of the Code on the ground that the Respondent No. 2 was not wife within the meaning of [Section 498-A](#) of the IPC and was not entitled to maintain complaint under the said provision."

6. In view of the above position of law, proceedings relating to the offence under Section 498-A I.P.C. cannot be quashed, merely on the ground of no marriage.

7. However, as regards the allegations pertaining to constituting the offence under Section 417 I.P.C., this Court does not find any material which would suggest that the petitioner has committed the said offence. There is no allegation constituting the said offence in the complaint of the complainant. The allegation that he brought a woman is only subsequent

to the alleged marriage between the complainant and the petitioner and it cannot be said that the petitioner has any intention to cheat the complainant from the inception.

8. In the result, the Criminal Petition is partly allowed. So far as Section 417 I.P.C. is concerned, further proceedings against the petitioner/accused in C.C. No.293 of 2013 on the file of the Court of II Additional Judicial First Class Magistrate, Eluru West Godavari District, are hereby quashed. The Criminal Petition, insofar as quashing the proceedings for the offence under Section 498-A I.P.C. is concerned, is dismissed.

9. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 26.09.2018.
Dsh/Lmv



T. RAJANI, J