

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26832 of 2014
in Crl.M.P.No.1 of 2014

A.Sakthivel

.. Petitioner

/versus/

1. State Rep by Inspector of Police,
All Women Police Station,
Udhagamandalam.
(Crime No.5 of 2013).

2. Nisha

... Respondents

Prayer:

Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records of the C.C.No.196 of 2014, on the file of the learned Judicial Magistrate, Udhagamandalam, Nilgiri District and quash the same.

For Petitioners : M/s.M.Kempuraj

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.side)
for R1
No appearance for R2

O R D E R

This petition has been filed seeking to quash the proceedings pending in C.C.No.196 of 2014, on the file of the learned Judicial Magistrate, Udhagamandalam, Nilgiri District.

2. The case of the prosecution is that the petitioner is the husband of the second respondent and they got married on 26.08.2011. It is further alleged that the petitioner demanded dowry and committed mental cruelty upon her. The physical cruelty that was committed by the petitioner upon the second respondent has also been stated in the final report.

3. The FIR was initially registered for an offence under

Sections 417, 420 and 498A of IPC. On the completion of the investigation, the final report was filed only for an offence under Section 498 A of IPC and other two offences were given up. The Court below also took cognizance of the final report only for an offence under Section 498 A of IPC.

4. The learned counsel for the petitioner submitted that the very prosecution against the petitioner is not maintainable due to the fact that there was no husband and wife relationship between the petitioner and the second respondent. The learned counsel submitted that the petitioner was working as a Sub Inspector of Police and the second respondent had developed some relationship with the petitioner. However, the fact remains that the second respondent was already married to one Satheesan and the said marriage is still in subsistence.

5. The learned counsel for the petitioner further submitted that departmental proceedings were initiated against the petitioner after the criminal proceedings were commenced and in the departmental proceedings, the second respondent had also deposed as a witness. While, deposing as a witness, the second respondent has categorically stated that the first marriage is still in subsistence and this was well within the knowledge of the petitioner and in spite of the same, the petitioner had agreed to marry the second respondent.

6. The learned counsel submitted that the fact regarding the first marriage of the 2nd respondent and its subsistence is supported by the marriage certificate and also the admission of the 2nd respondent about the said fact, during the departmental enquiry. Therefore, under such circumstances, the learned counsel submitted that the prosecution under Section 498 A of IPC, is not sustainable against the petitioner.

7. The learned counsel appearing on behalf of the respondent police submitted that the respondent police, in the course of investigation, have collected sufficient materials in order to prove the physical and mental cruelty that was undergone by the 2nd respondent in the hands of the petitioner. The learned counsel further submitted that the issue as to whether the 2nd respondent was already married and whether there was a valid marriage between the petitioner and the 2nd respondent, are all matters of evidence and the same can be found out only in the course of the trial. The learned counsel submitted that the said exercise cannot be done by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Therefore, the learned counsel submitted that the petitioner must be made to undergo the trial before the Court below.

8. The 2nd respondent has been served the notice and her name has also been printed in the cause list. However, there is no appearance for the 2nd respondent. Therefore, this Court proceeds to dispose of this case on merits.

9. It is true that this Court cannot conduct a roving enquiry and assess the evidence at the stage of considering a petition filed under Section 482 of Cr.P.C. However, the only exception that has been provided by the Hon'ble Supreme Court are in cases, where there are materials of sterling quality available before the Court. In such cases, this Court can always rely upon those documents, over which there is no dispute and they are of sterling and unimpeachable quality.

10. In the instant case, there are two materials that are available under this category. The first material is the marriage registration certificate of the second respondent. This registration certificate has been issued by the marriage officer of Palakkad District under the Special Marriage Act. It is found in the certificate that the 2nd respondent is married to one Satheesan. The next material that is available before this Court is the voter ID, wherein, the first respondent's husband's name is found as Satheesan. The 2nd respondent has participated during the departmental enquiry, as a witness and she has categorically admitted the fact that she is married to Satheesan and she has not obtained any divorce and when the first marriage was in force, she has married the petitioner again in the 2011.

11. It is clear from the above that there was no valid marriage between the petitioner and the 2nd respondent and there is no husband and wife relationship between the parties.

12. The next issue that comes up for consideration is whether the prosecution can sustain the charge under Section 498 A of IPC, even in a case, where there is no husband and wife relationship between the parties?

13. The learned counsel for the petitioner has relied upon two judgments of the Kerala High Court. The first judgment is in Suprabha Vs.State of Kerala reported in 2014(1) Cri.CC 723: 2013(3) Ker L.J.447: 2013 (4) R.C.R (Criminal) 248: 2013 (3) KLT 514: 2013 (130) AIC 947: 2013 (3) DMC 873: 2014(1) Crimes 93 and another judgment in Unnikrishnan @ Chandu, S/o.Velayudhan, Parayil House, Pallipuram Vs.State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam reported in 2017(3) Ker LJ 918: 2017 (3) DMC 477: 2017 (3) KLT 991: 2017 (4) ILR (Kerala) 822: 2018 (1) Cri.CC 166 : 2018 (181) AIC 727 : 2018 Cri. LJ 265: 2018 (2) Crimes 201: 2018 (2) AICLR 383.

14. In the judgment in Suprabha Vs.State of Kerala, referred supra, the relevant portions of the judgment is extracted hereunder:

8. According to the learned counsel for the petitioner, a valid marriage is a necessary ingredient to invite an offence under Section 498 A of the Indian Penal Code. At the same time, the learned counsel for the defacto complainant has strenuously contended that any valid marriage is no required to invite offence under Section 498 A of the Indian Penal Code, whereas a long cohabitation in the form of a marriage is sufficient. The learned counsel for the petitioer has invited my attention to the decision of a three Judges' Bench of the Supreme Court in Shivcharan Lal Verma & Anr. v. State of M.P., (2002) (2) Crimes 177 SC : JT (2002)2 SC 641) wherein the Apex Court held that in order to attract an offence under Section 498 A of the Indian Penal Code, the subsistence of a valid marriage is required. In the case relating to the decision in Shivcharan Lal Vrma's case (Supra), the marriage in question was null and void on account of the subsistence of another valid marriage. It was held as follows:

''.... One, whether the prosecution under S.498A can at all be attracated 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 S.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 S.498 A is concerne, inasmuch as the alleged married with Mohini during the subsistence of valid marriage with kalindi is null and void. We, therefore, set aside the conviction and sentence under S.498A of the I.P.C.''

The said decision has been followed in Suvetha v.Inspector of Police reported in 2009(2) R.C.R. (Criminal) 923: 2009 (3) Recent Apex Judgments (R.A.J.) 458: 2009(2) KLT 686(SC), by the Apex Court.

9. The learned counsel for the defacto complainant has invited my attention to the decision in Subbharao v. State of A.P.reported in 2009(2)

R.C.R.(Criminal) 860: 2009 (3) Recent Apex Judgments (R.A.J.) 3888: 2009(2) KLT 531 (SC), wherein it was held that:

'The absence of a definition of 'husband' to specifically include such persons who contravene marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of S.304 B or 498A. IPC.'

It has to be noted that in the said decision, the earlier decision of the three Judges' Bench in Shivcharan Lal Verma's case (Supra) was not mentioned or considered.

10. Similarly, the learned counsel for the defacto complainant as well as the learned Public Prosecutor has pointed out the decision in Aravindan v. State of Kerala reported in [2005 (3) R.C.R. (Criminal) 984 : 2005(3) KLT 157] rendered by a learned Single Judge of this Court, wherein it was held that:

'The expression 'husband' in S.498 A covers such persons who enter into marital relationship and under the colour of such proclaimed status of husband coerces her in any manner, for any of the purposes enumerated in S.304 B or 498 A.'

When there is a binding precedent by a three Judges' Bench of the Apex Court in the matter, this Court is bound to follow the dictum laid down by the Apex Court in the said decision. Relying on the decision in Shivcharan Lal Verma's case (Supra), it has to be found that an offence under Section 498 -A cannot be invited in this particular case for any period prior to 14.10.2003. As far as any period after 14.10.2003 concerned, there is no valid allegation in the private complaint in order to invite the ingredients of Section 498 A of the Indian Penal Code.

15. In the judgment in Unnikrishnan @ Chandu, S/o.Velayudhan, Parayil House, Pallipuram Vs.State of Kerala, referred supra, the relevant portions of the judgment is extracted hereunder:

The trend of the earlier decisions was that for a conviction under section 498A IPC, the prosecution must prove a valid marital relationship between the

deceased and the accused. There occurred a change in the trend when the Honourable Supreme Court interpreted section 498A IPC in view of the absence of the definition of the word 'husband', and held that even long co-habitation as man and wife will attract a prosecution under section 498A IPC. The Honourable Supreme Court so decided in Reema Agarwal v. Anupam, 2004 (2) KLT 822 SC, and later in Koppiseti Subbharao @ Subrahmaniam v. State of Andhra Pradesh, AIR (2009) SC 2684. In Koppiseti Subbharao's case, the Honourable Supreme Court held in paragraph 6 of the judgment thus,

''.....there could be no impediment in law to liberally construe the words or expressions relating to the persons committing the offence so as to rope in not only those validly married, but also any one who has undergone some or other form of marriage, and thereby assume for himself the position of husband to live, co-habitat and exercise authority as such husband over another woman.....''

It is pertinent to note that prior to the above decisions, a three Judge Bench of the Honourable Supreme Court had decided otherwise, that the mental or physical harassment of a lady who had not been legally married by the accused, will not attract a prosecution under Section 498A IPC. In Shivcharan Lal Verma and Another v. State of Madhya Pradesh, 2002 (2) Crimes 177 SC: JT 2002(2) SC 641, the three Judge Bench held that for a prosecution under section 498A IPC, there must be a valid marital relationship between the accused and the victim. That is a case where a second wife committed suicide, allegedly due to the acts of cruelty of her husband and the former wife. The victim's marriage with the accused in the said case was void ab initio. For the said reason, the Honourable Supreme Court held that a conviction under Section 498A cannot be sustained. The decision was followed by the Honourable Supreme Court later in U.Suvetha v. State by Inspector of Police and Another, (2009) CrL.L.J. 2974. Following the decision of the Honourable Supreme Court cited above in Shivcharan Lal Verma's case, this Court also held in Suprabh-a v. State of Kerala, 2013 (3) KLT 514 that , only a legally wedded wife can claim the protection under section 498A IPC, and that in the absence of such a legal relationship as husband and wife, there cannot

be a conviction under section 498A IPC. In the present case, the relationship of the accused and the deceased was only a live-in relationship. Even in Koppiseti Subbharao's case, the Honourable Supreme Court held that the parties must have undergone some sort of ceremonies with the object of getting married. In this case, the parties, admittedly, had not undergone any such ceremony, and they just started living as man and wife. Thus, I find that on legal ground itself, the accused is entitled for acquittal. In the above circumstances, it is not necessary to go into the factual aspects as regards the allegation of cruelty and harassment.

In the result, the appeal is allowed. The appellant is not found guilty of the offence under section 498A IPC, and he is acquitted of the said offence in appeal under section 386(b)(i) of Cr.P.C., 1973. Accordingly, the conviction and sentence against him in S.C.No.650 of 2006 of the Court below will stand set aside. The appellant is released from prosecution, and the bail bond, if any, executed by him will stand discharged.

16. It is clear from the above judgments that only a legally wedded wife can claim protection under Section 498 A of IPC and in the absence of such a legal relationship as husband and wife, there cannot be a conviction under Section 498 A of IPC. The three member Bench of the Hon'ble Supreme Court, that has been referred in both the judgments, categorically holds that in order to attract an offence under Section 498 A of IPC, the subsistence of a valid marriage is a sine-qua-non. Where the marriage itself is null and void, on account of the subsistence of another valid marriage, the prosecution cannot sustain a charge under Section 498 A of IPC.

17. This Court is in complete agreement with the judgment of the Kerala High Court.

18. The facts of this case is squarely covered by the above judgments. In this case, there was no relationship of husband and wife between the petitioner and the 2nd respondent, since there was a subsisting marriage between the 2nd respondent and one Satheesan. This is established beyond doubts by materials, which has already been referred supra.

19. In the result, the proceedings against the petitioner cannot be sustained for an offence under Section 498 A of IPC and therefore the continuation of the proceedings is an abuse of process of Court which requires interference of this Court under Section 482 of Cr.P.C.

20. The proceedings in C.C.No.196 of 2014, on the file of the learned Judicial Magistrate, Udhagamandalam, Nilgiri District, is hereby quashed and this Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Udhagamandalam,
Nilgiris District.
2. The Inspector of Police,
All Women Police Station,
Udhagamandalam.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Kempuraj, Advocate, S.R.No. 68510 (18/11/2019)

Cr1.O.P.No.26832 of 2019

MP (CO)
CS/24/09/2019

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