

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.4416/2015 & CRL.M.A.15604/2015**

Judgment reserved on :02.05.2018
Date of decision : 30.05.2019

AKHTAR MALIK & ANR. Petitioners

Through: Mr. Sunil Sharma, Advocate.

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Raghuvinder Varma, APP
for State with SI Devender
Singh, PS Govindpuri.
None for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners i.e. Akhtar Malik s/o Sh. Hakimuddin and Hanif Malik s/o Sh. Hakimuddin, vide the present petition seek quashing of the FIR No.461/2013 dated 02.07.2013, PS Govindpuri under Sections 498A/406/34 of the Indian Penal Code, 1860, and the resultant charge sheet submitting to the effect that they have been arrayed as the accused persons in column no.11 without their arrest and that the learned Metropolitan Magistrate vide order dated 11.09.2015 has taken cognizance and issued summons to them, but they are distant

relatives of the husband of the respondent no.2, Ms.Ruby w/o Sh. Saleem Malik, in as much as they, the petitioners are the maternal uncles of the Jethani i.e. the wife of the elder brother of the husband of the complainant/ respondent no.2 and that thus, the allegations levelled against them are far fetched and that they do not fall within the ambit of the term 'relative of the husband' under Section 498A of the Indian Penal Code, 1860 and that the summoning order is banned in law.

2. The FIR registered in the instant case was lodged on 02.07.2013 at 7.15 PM on the complaint made by the respondent no.2 i.e. the complainant, the wife of Sh. Saleem, s/o Sh. Kamruddin, r/o H.No. T.A. 308, Gali No.5, Tuglakabad, New Delhi, in which the complainant/ respondent no.2 alleged that she had been harassed by her in-laws with dowry demands and for having not fulfilled the demands of her in-laws of a car by her family members. As per the FIR, initially the behavior of her relatives was quite alright but after she gave birth to a son on 18.06.2005, her in-laws i.e. her parents-in-law, her husband and other family members started compelling her in the hospital to give her son in adoption to her sister-in-law (Nanad) named Smt. Bano, but when she, the complainant refused to do so, her husband slapped her and her parents-in-law, sisters-in-law (two Jethanis and Nanad) abused her i.e. the complainant, as a consequence of which there was a lot of noise and on hearing the noise, the nurse came and sent all those persons out of the room, whereafter, her husband and in-laws became further adverse to her and did not look after her nor her child even after her discharge from the hospital and

her husband and her in-laws told her that they would never let her live with peace in the house and thereafter, her sister-in-law (Nanad) namely Bano caught hold of her hair and slapped her and told her that she would now live in the house as a maid servant and thereafter they harassed her even more and there were demands of dowry made and her husband, her parents-in-law, brothers-in-law (Jeth), sisters-in-law (Jethanis & Nanad) stated that her father had not given a car in the marriage and thus, he would have to give a car in the '*Chochak*' of the child, otherwise, her family would have to bear the consequences and thereupon, she came back to her parental home but did not tell anything to her father in view of his condition but when she returned to her matrimonial home, her father had given her articles worth Rs.1,50,000/- but despite the same, her in-laws' were not happy and her parents-in-law, her brothers-in-law (Jeths), sisters-in-law (Jethanis & Nanad) regularly beat her with fist blows and kicks for having not brought sufficient dowry and for having not brought a car.

3. ***Inter alia* through the FIR, the complainant further alleged that her sister-in-law (Jethani) Farzana threatened her everytime about her maternal uncles (i.e. Farzana's maternal uncles) namely Akhtar and Hanif (i.e. the petitioners herein) that the complainant did not know that they were very bad persons (*badmash*) and that they would make the life of her father miserable and would get him involved in a false case. It was further stated through the said FIR by the complainant that one day, her sister-in-law (Jethani) Farzana called these two persons (i.e. the petitioners herein) to her in-laws' house and instigated them against the complainant and**

these persons (i.e. the petitioners herein) threatened the complainant that if she did not fulfil the demands of her in-laws then both of them would get her husband married the second time and would not let her, the complainant live in her matrimonial home.

4. As per the further averments made in the FIR, it was stated by the complainant that she informed this to her father and her father pleaded with her in-laws and requested them not to harass his daughter for he did not have any more means to purchase a car for them but none of this affected her in-laws and they repeatedly harassed her with dowry demands and beat her and whenever her sister-in-law (Nanad) named Bano came to her in-laws house, then she used to misbehave with the complainant and used to beat her and used to taunt her and all these persons used to threaten that they would get her killed and that her sister-in-law (Jethani) wife of Islam also threatened her that she would not let the complainant stay in her in-laws house and these persons for every matter used to threaten the complainant that they would get her husband Saleem re-married and that she subsequently learnt on 19.04.2013, that her husband was re-married on 17.04.2013.

5. The complainant further alleged that the petitioners herein i.e. Akhtar and Hanif were the persons who were responsible for this second marriage of the complainant's husband. She further stated that these persons i.e. the petitioners herein also used to keep compelling her to leave the matrimonial home and that on 05.05.2013, she was asked by the petitioners herein to leave her matrimonial home as the new bride was to come but she, the complainant refused to leave the

matrimonial home and then, her husband, her parents-in-law, her brother-in-law and his son namely Asif, sisters-in-law (Jethanis and Nanad) bolted her in a room and beat her with fist blows and kicks and threatened her and told her that if she came out of the house, she would be burnt alive.

6. As per the FIR, the complainant alleged that her brother-in-law's son (son of her Jeth) named Asif came with a knife in his hand and told her that he would kill her by inflicting it upon her if she did not leave the house and at about 10.00 PM, she was threatened that she would be thrown from the roof of the house, whereafter she informed the police and the police got her medically examined and FIR No.296/13 was registered at PS Govindpuri under Sections 342/323/506/34 of the Indian Penal Code, 1860. The complainant further stated through the FIR that on 13.05.2013 at about 10.00 PM, when she was lying down in a room in her in-laws' house, of which the inner latch had been broken by her father-in-law on 17.04.2013, her Jeth namely Islam suddenly entered in the room and picked up her phone and then when she asked her as to why he had come and why he had picked her phone, then Islam told her that she, the complainant would sleep with him and only then he would return her phone to her and that she would sleep with him just as she used to sleep with her husband Saleem, to which the complainant replied that she would never do the same and would never let Islam the same, on which Islam pressed her mouth and started attempting to outrage her modesty and tore her clothes and she somehow managed to catch hold of the cricket bat of her child, so that she could beat Islam, on which he ran

away from there and whilst he was running away, he threatened the complainant and if she told anyone, he would kill her son.

7. *Inter alia* through the FIR, the complainant alleged that she had telephoned the police and also got a lock fixed outside her room and had come to her parental home on 14.05.2013 on which the police registered the FIR No.332/13, PS Govindpuri under Sections 354A/354B. The complainant further alleged that all her articles and *streedhan* had not been returned to her so far and that she left all her dowry articles at her matrimonial home.

8. The charge sheet submitted in the instant case is on the same footing as averments made in the FIR in which it was *inter alia* also stated that the spouse of the complainant named Saleem denied having taken any dowry articles and further stated that he had already divorced Smt. Ruby and submitted the copy of the *Talaknama*, which was duly verified from Doctor Mufti Mukarram Ahmed, Shahi Imam, Fathepuri Shahi Masjid, Delhi, who stated that he only gave a *fatwa* but no divorce was given in his presence. All accused persons named in the FIR were thus, on the allegations in the charge sheet contended to have committed the offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860.

9. Notice of the petition was issued to the two respondents and submissions were made on behalf of either side on 02.05.2018.

10. No reply having been filed by the respondent no.2 despite ample opportunities granted since 08.03.2016, the grant of a further opportunity for filing the same was declined vide order dated

19.01.2018. Vide proceedings dated 19.10.2015, the trial against the petitioners as pending in the learned Trial Court, has been stayed.

11. At the outset, it is essential to observe that though, the proceedings before the learned Trial Court have been stayed vide order dated 19.10.2015, it is apparent that the adjudication of the present petition is confined to the allegations levelled against the present petitioners namely Akhtar Malik and Hanif Malik and does not in any manner affect the merits or demerits of the contentions raised before the learned Trial Court and the charge sheet filed by the State against the accused other than the present petitioners named Akhtar and Hanif.

12. It has been contended on behalf of the petitioners that the learned Trial Court has not taken into account that there is no demand of dowry made by the petitioners for themselves and that they have been erroneously summoned and that the petitioners did not fall within the definition of '*relatives of husband*' under Section 498A of the Indian Penal Code, 1860 and did not fall within the category of relatives of the husband and that the words '*relative of the husband*' under Section 498A of the Indian Penal Code, 1860 inserted into the enactment can never have been so inserted to mean every person who was merely remotely connected with the main characters of the case. The petitioners further submitted that they are stated to be maternal uncles (Mamas) of the sister-in-law (Jethani) of the complainant and can thus, be termed to be the relatives of the sister-in-law (Jethani) of the complainant and cannot be termed to be the relatives of the

husband of the complainant and the petitioners have submitted that their summoning to face the trial has resulted into great miscarriage of justice and that the present petitioners cannot be allowed to stand the trial qua the charge sheet submitted.

13. During the course of arguments that were addressed on behalf of the petitioners, reliance was placed on their behalf by the learned counsel on the verdict of the Hon'ble Supreme Court in ***“U. Suvetha Vs. State By Inspector of Police and Anr.” (2009) 3 SCC CrI. 36.***

14. The verdict of the Hon'ble Supreme Court in the said case ***“U. Suvetha Vs. State By Inspector of Police and Anr.”*** (supra) observes vide para 7, 10, 11, 12, 13, 14 & 15 to the effect:-

“7. Ingredients of 498A of the Indian Penal Code are :-

- a). The 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. 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 grand-daughter 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.

11. The word `relative' has been defined in P. Ramanatha Aiyar Advanced Law Lexicon - Volume 4, 3rd Edition as under :-

"Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "RELATIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the deceased,

- a) the wife or husband of the deceased;***
- b) the father, mother, children, uncles and aunts of the deceased, and***
- c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act....].***

A person shall be deemed to be a relative of another if, and only if, -

- a) they are the members of a Hindu undivided family, or***
- b) they are husband and wife; or***
- c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].***

"RELATIVE" in relation to an individual means -

- a) The mother, father, husband or wife of the individual, or***
- b) a son, daughter, brother, sister, nephew or niece of the individual, or***
- c) a grandson or grand-daughter of the individual, or***
- d) the spouse of any person referred to in sub-clause (b) [Income tax Act].***

"RELATIVE" means -

- 1) spouse of the person ;***

- 2) *brother or sister of the person ;*
- 3) *brother or sister of the spouse of the person;*
- 4) *any lineal ascendant or descendant of the person;*
- 5) *any lineal ascendant or descendant of the spouse of the person;*

[Narcotic Drugs and Psychotropic Substances Act]."

12. *Random House Webster's Concise College Dictionary* defines 'relative' at page 691 to mean :-

"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference : relevant; pertinent (usually fol. by to): two facts relative to the case. 9. correspondent; proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor."

13. *Further more, Section 498-A is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly.*

This Court in T. Ashok Pai v. Commissioner of Income Tax, Bangalore, [2007 (8) SCALE 354] held as under :-

"17. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Ors. v. Govt. of Kerala.)" [See also Noor Aga v. State of Punjab].

14. A Three Judge Bench of this Court, however, in Shivcharan Lal Verma and another v. State of M.P., [2002 (2) Crimes 177 SC = JT (2002) 2 SC 641] while interpreting Section 498A of the Indian Penal Code, in a case where the prosecution alleged that during the life of the first wife- Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-

"..One, whether the prosecution under Section 498A can at all be attracted 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 Section 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 Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We,

therefore, set aside the conviction and sentence under Section 498A of the IPC."

15. A Two Judge Bench of this Court, however, in Reema Aggarwal v. Anupam, [(2004) 3 SCC 199], while construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating :-

"...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 colour 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/498-A, 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." **(emphasis supplied)**

with it thus, having been spelt out that Section 498A of the Indian Penal Code, 1860 being a penal provision deserves a strict construction.

15. It is essential to observe that the verdict of the Hon'ble Supreme Court in "*U. Suvetha Vs. State By Inspector of Police and Anr.*" (supra) has been followed in "*State of Punjab Vs. Gurmit Singh*" 2014(2)ACR2315SC with specific reference to paragraphs 7, 8 & 9 thereof, which read to the effect:-

"7. It is relevant here to state that the expression "relative of the husband" has been used in Section 498-A of the Indian Penal Code While interpreting the said expression, this Court in the case of U. Suvetha v. State by Inspector of Police and Anr. MANU/SC/0774/2009 : (2009) 6 SCC 787 held it to mean a person related by blood, marriage or adoption. Relevant portion of the judgment reads as follows:

10. 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.

8. The expression relative of the husband further came up for consideration in the case of Vijeta Gajra v. State of NCT of Delhi MANU/SC/0456/2010 : (2010) 11 SCC 618 and while approving the decision of this Court in U. Suvetha (Supra), it was held that the word relative would be limited only to the blood relations or the relations by marriage. It is appropriate to reproduce the following passage from the said judgment:

12. Relying on the dictionary meaning of the word "relative" and further relying on Ramanatha Aiyar's, Advance Law Lexicon (Vol. 4, 3rd Edn.), the Court went on to hold that Section 498-A Indian Penal Code being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in T. Ashok Pai v. CIT MANU/SC/7720/2007 : 2007) 7 SCC 162. A reference was made to the decision in Shivcharan al Verma v. State of M.P. MANU/SC/0466/2002 : (2007) 15 SCC 369. After quoting from various decisions of this Court, it was held that reference to the word "relative" in Section 498-A Indian Penal Code would be limited only to the blood relations or the relations by marriage.

9. It is well known rule of construction that when the Legislature uses same words in different part of the statute, the presumption is that those words have been used in the same sense, unless displaced by the context. We do not find anything in context to deviate from the general rule of interpretation. Hence, we have no manner of doubt that the word "relative of the husband" in Section 304B of the Indian Penal Code would mean such persons, who are related by blood, marriage or adoption. When we apply this principle the Respondent herein is not

related to the husband of the deceased either by blood or marriage or adoption. Hence, in our opinion, the High Court did not err in passing the impugned order. We hasten to add that a person, not a relative of the husband, may not be prosecuted for offence Under Section 304B Indian Penal Code but this does not mean that such a person cannot be prosecuted for any other offence viz. Section 306 Indian Penal Code, in case the allegations constitute offence other than Section 304B Indian Penal Code.”

as also in “*Vijeta Gajra Vs. State of NCT of Delhi*” (2010) 11 SCC 618, with specific reference to observations in paragraphs 11, 12 & 13 thereof, which read to the effect:-

“11. Shri U.U. Lalit, Learned Senior Counsel, appearing on behalf of the appellant argued that in U. Suvetha v. State By Inspector of Police & Anr. [(2009) 6 SCC 757], it was specifically held that in order to be covered under Section 498A, IPC one has to be a 'relative' of the husband by blood, marriage or adoption. He pointed out that the present appellant was not in any manner a 'relative' as referred to in Section 498A, IPC and, therefore, there is no question of any allegation against her in respect of the ill-treatment of the complainant. The Court in this case examined the ingredients of Section 498A, IPC and noting the specific language of the Section and the Explanation thereof came to the conclusion that the word 'relative' would not include a paramour or concubine or so.

12. Relying on the dictionary meaning of the word 'relative' and further relying on R. Ramanatha Aiyar's Advance Law Lexicon, Volume 4, 3rd Edition, the Court went on to hold that Section 498A, IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On

that behalf the Court relied on the judgment in T. Ashok Pai v. CIT [(2007) 7 SCC 162]. A reference was made to the decision in Shivcharan Lal Verma & Anr. v. State of M.P. [(2007) 15 SCC 369]. After quoting from various decisions of this Court, it was held that reference to the word 'relative' in Section 498A, IPC would be limited only to the blood relations or the relations by marriage.

13. Relying heavily on this, Shri Lalit contended that there is no question of any trial of the appellant for the offence under Section 498A IPC. The argument is undoubtedly correct, though opposed by the Learned Counsel appearing for the State. We are of the opinion that there will be no question of her prosecution under Section 498A IPC. Learned Senior Counsel appearing on behalf of the complainant, Shri Soli J. Sorabjee, also did not seriously dispute this proposition. Therefore, we hold that the FIR insofar as it concerned Section 498A IPC, would be of no consequence and the appellant shall not be tried for the offence under Section 498A IPC."

brings forth that Section 498A has to be related only to the blood relations or the relatives by marriage of the husband of a victim.

16. The verdict of the Hon'ble High Court of Punjab & Haryana in "*Anoop & Ors vs. Vani Shree*" 2015ALLMR(Cri)351, also did not hold members of the extended family related to the father of the husband of the complainant, who were not in anyway residing in the shared household of the complainant's husband to be members of the *intra family* of the husband to make them culpable under the Protection of Women from Domestic Violence Act, 2005 nor under Section 406/498A of the Indian Penal Code, 1860.

17. Though, on behalf of the State, it was contended that the petition be dismissed, on a consideration of the verdicts relied upon on behalf of the petitioners in ***“U. Suvetha Vs. State By Inspector of Police and Anr.”*** (supra) and the verdicts of the Hon’ble Supreme Court in ***“Vijeta Gajra Vs. State of NCT of Delhi”*** (supra) and ***“State of Punjab Vs. Gurmit Singh”*** (supra) in relation to the same aspect, it is apparent that the expression ‘*relative of the husband*’ under Section 498A of the Indian Penal Code, 1860 which is a penal provision has to be given a strict interpretation in the absence of any statutory definition of the term ‘*relative*’ which thus has to be assigned a meaning as is knowingly understood and is to include a person related by blood, marriage or adoption as laid down by the Hon’ble Supreme Court in ***“U. Suvetha Vs. State By Inspector of Police and Anr.”*** (supra) and in ***“Vijeta Gajra Vs. State of NCT of Delhi”*** (supra) and thus, in the facts and circumstances of the instant case, it is apparent that the two present petitioners namely Akhtar and Hanif arrayed as accused in the FIR No. 461/2013 dated 02.07.2013, PS Govindpuri under Sections 498A/406/34 of the Indian Penal Code, 1860 are not related to the husband of the complainant nor by the blood, nor by marriage, nor by adoption, **in as much as the two petitioners are the maternal uncles of the sister-in-law (Jethani) i.e. the maternal uncles of the sister-in-law i.e. the wife of the elder brother of the husband of the complainant** and can thus, not in any manner fall within the meaning of the term ‘*relative*’ of the husband of the complainant as being related to him by blood, marriage or adoption.

18. In these circumstances, the petition is allowed to the extent that the petitioners namely Akhtar and Hanif, cannot be prosecuted for the offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 in relation to the FIR 461/2013 dated 02.07.2013, which in relation to the offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 alone is quashed qua the two petitioners alone. However, the same shall not prevent the prosecution of the petitioners if permissible in law for any of other offence that may be constituted against them on the basis of the allegations levelled against them.

19. **Furthermore, though vide order dated 19.10.2015 the trial has been stayed before the learned Trial Court, it is directed that the FIR having been quashed against the present petitioners namely Akhtar and Hanif alone, the trial against the remaining accused persons, if any, shall proceed expeditiously in accordance with law.**

20. The application CRL.M.A.15604/2015 is disposed of accordingly.

21. Copy of this judgment be sent to the learned Trial Court forthwith.

ANU MALHOTRA, J.

MAY 30th, 2019/NC