

06.05.2022

Sl. No. 11.

Mithun.

Ct.No.42.

CRMSPL/62/2018

(Via Video Conference)

Ashoke Sarkar

Vs.

Sanjit @ Sachin Halder

None appears on behalf of the petitioner.

This is an application under Section 378(4) of the Code of Criminal Procedure filed by the complainant/petitioner praying for leave to file appeal against the opposite party.

On perusal of the lower court record it appears that the opposite party faced trial on the charge under Section 498 of the Indian Penal Code.

During trial of the case, 3 witnesses were examined on behalf of the complainant. The learned Magistrate on due consideration of evidence on record, recorded order of acquittal in favour of the opposite party.

The complainant being aggrieved against the said order of acquittal passed in Complaint Case No.1109 of 2006 on 11th April, 2018 has filed the instant application for leave to file appeal.

Section 498 of Indian Penal Code runs thus:-

“498. Enticing or taking away or detaining with criminal intent a married woman.-Whoever takes or entices away any woman

who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

The allegation against the opposite party is that he had illicit relationship with the wife of the complainant. Both of them used to spend time together and on 19th September, 2006 the wife of the complainant and the opposite party were arrested by police attached to Gobardanga T.O.P. while they were together in compromise position.

On plain reading of the provision contained in Section 498 of the Indian Penal Code, the complainant request to prove that his wife was enticed by the opposite party and the opposite party had the intention to having illicit intercourse with the wife of the complainant or that the wife of the complainant may be induced to have sexual intercourse with any person. Thus, two basic ingredients are require to be proved by the complainant in order to bring home the charge under Section 498 of the Indian Penal Code.

- (1) Inducement by the accused to the wife of the complainant and
- (2) Such inducement and/or taking away is for the purpose of having illicit intercourse with any person.

Only evidence that came before the Court below is that the wife of the complainant had established illicit relation with the opposite party and they were found in compromise position by police.

It is not in dispute that the wife of the complainant is a major lady. A woman who has attained majority may establish relationship with any person. Marital status does not create any bar of having such relationship. The penal provision contained in the Indian Penal Code or any other statute concerning with the subject does not describe an extra marital relationship of a married woman with a person, not being her husband, an offence. However, if any person induces the lady and takes her away for the purpose of illicit intercourse, the offender may be held guilty under Section 498 of the Indian Penal Code. In such case mens rea of the wife of the complainant is not a matter to be considered by this Court or in other words, mens rea of the woman is treated to be absent in order to prove charge under Section 498 of the Indian Penal Code. It is the accused person having criminal intention to commit an offence under Section 498 of the Indian Penal Code by inducing the woman and taking her away for the purpose of illicit intercourse.

In the instant case, the evidence on record shows that the wife of the complainant voluntarily established illicit relationship with the opposite party and there was no material of inducement against him.

Therefore, this Court is of the view that the learned Trial Judge rightly recorded the order of acquittal by the opposite party and accordingly, the application for special leave to appeal is **dismissed on merit.**

The lower court record be returned.

(**Bibek Chaudhuri, J.)**

