



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1171 OF 2023

Najmunnisa Begam Shaukat Hussain

Age : 69 years, Occ : Nil,

R/o. 5A/400/4646 Group No.5,

Tagore Nagar Vikhroli, East, Mumbai,

Subarban, Maharashtra, 400083

[Mother of First Wife of Husband]

.. Petitioner

Versus

1] The State of Maharashtra,
Through Dharangaon Police Station,
Tq : Dharangaon, Dist. Jalgaon

2] Shaban Parveen Shaikh Jainuddin
Age : 40 years, Occu : Household,
R/o : Ahmed Raza Chowk, Dharangaon,
Tq. - Dharangaon, Dist. - Jalgaon

.. Respondents

...

Advocate for petitioner : Mr. G.R. Syed

APP for the respondent – State : Mr. K.N. Lokhande

Advocate for the respondent no. 2 : Mr. Niraj P. Chudiwal (Appointed)

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 06 MARCH 2024

PRONOUNCED ON : 20 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

Under Article 226 of the Constitution of India, the petitioner is seeking quashment of crime no. 99 of 2022 of Dharangagon Police Station, District Jalgaon for the offences punishable under section 498-A, 294, 323, 504, 506 of the Indian Penal Code and consequent

chargesheet and the Regular Criminal Case No. 117 of 2022 pending on the file of Judicial Magistrate First Class, Dharangaon.

2. Though there are few other aspects, the interesting issue which crops up is as to whether the mother of the deceased first wife, can be prosecuted under section 498A, being a relative of the husband, on a complaint filed by second wife with whom the husband has subsequently married.

3. The learned advocate for the petitioner would submit that as has been consistently laid down by the Supreme Court in catena of judgments, for the purpose of section 498A of the Indian Penal Code, the relative of a husband would mean a person related to him by blood, marriage or adoption. The learned advocate would submit that since the petitioner is not related to the husband directly in the sense relation between the two is only through the deceased who was first wife of the husband, she cannot be prosecuted under section 498-A.

4. Per contra, the learned APP and the learned advocate for the respondent no. 2 would submit that in the context of the facts and circumstances of the case since the petitioner was cohabiting with the husband under the same roof, even if the first wife of the husband died long back, since the respondent no. 2 was cohabiting in a matrimonial home together with the petitioner who had taken part in subjecting her

to cruelty and at times had even indulged in causing physical harm, she is liable to be prosecuted even under section 498A since she had become a relative of the husband out of his first marriage and had become a family member.

5. Indeed, the Supreme Court and High Courts in several matters, had dealt with similar issues. In a matter of ***Shivcharan Lal Verma Vs. State of M.P.; (2007) 15 SCC 369*** which was a decision of the Hon'ble three Judges Bench of the Supreme Court decided in the year 2002, though apparently reported in the year 2007, it was held that if during subsistence of a valid marriage, the second marriage being void, action under section 498A of the Indian Penal Code could not be initiated by the second wife.

6. In ***Reema Aggarwal V. Anupam; (2004) 3 SCC 199*** which was decided in the year 2004, a Hon'ble two Judges' bench of the Supreme Court observed that it was appropriate to construe the expression 'husband' to cover a person who enters into a matrimonial relationship feigning status of husband and subjects a woman concerned to cruelty or coerces her by demanding money. He can also be implicated under section 304-B and 498-A of the Indian Penal Code on a complaint filed by the second lady or wife. Pertinently, the decision in the matter of ***Shivcharan Lal Verma*** (supra) was not cited before the bench which decided ***Reema Aggarwal***.

7. In ***U. Suvetha Vs. State; (2009) 6 SCC 757*** was a matter decided by a two Hon'ble Judges' bench of the Supreme Court in the year 2009. Both the decisions, in the matter of ***Shivcharan Lal Verma*** (supra) and ***Reema Aggarwal*** (supra) were considered and it was expressly observed that it was not necessary to enter into a controversy as to if ***Reema Aggarwal*** was correctly decided. Since the facts and circumstances were different, it was held that the term 'husband' would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty.

8. Subsequently, in the matter of ***Vijeta Gajre Vs. NCT of Delhi; (2010) 11 SCC 618***, decided in the year 2010, a bench of two Hon'ble Judges of the Supreme Court relied upon ***Shivcharan Lal Verma*** and ***U. Suvetha***. All these three decisions in ***Shivcharan Lal, U. Suvitha*** and ***Vijeta*** (supra) were also referred to in ***State of Punjab V. Gurmit Singh; (2014) 9 SCC 632*** which was decided in the year 2014 by a bench of two Hon'ble Judges of the Supreme Court to conclude that any relative of a husband to mean who are related to him by blood, marriage or adoption.

9. In ***Rajinder Singh V. State of Punjab; (2015) 6 SCC 477*** decided in the year 2015 by a bench of three Hon'ble Judges of the Supreme Court, relying upon ***Reema Aggarwal***, in a prosecution under section 304-B and 498-A of the Indian Penal Code, held that the word 'husband' occurring in section 498-A, to include person who enters into a relationship even by feigning to be husband. Pertinently, ***Shivcharan Lal Varma*** (supra) was not cited before it, which was a decision of a bench of equal strength.

10. In a recent decision of a bench of two Hon'ble Judges, in the matter of ***P. Sivakumar V. State; 2023 SCC OnLine SC 1737*** relying upon the decision in the matter of ***Shivcharan Lal Verma***, it has been held that conviction under section 498-A of the Indian Penal Code would not be sustainable if the marriage between the husband who was the accused no. 1 and the informant - complainant was not legally possible / permissible. The decisions in ***Reema Aggarwal and Rajinder Singh*** (supra) were not cited before the bench.

11. In view of such a scenario, in our considered view, instead of dealing with this issue while entertaining a petition under Article 226 of the Constitution of India, it would be appropriate that the issue is kept open for being agitated, before and considered and decided by the trial Court.

12. We are of this view for the reason that there is enough material on the record to demonstrate that leaving aside section 498-A of the Indian Penal Code for the time being, still, the petitioner will have to face the trial for the other offences under the Indian Penal Code because of the material expressly attributing and alleging about she having not only abused the respondent no. 2 but even having quarreled with respondent no. 2 and abused her in filthy language and physically harmed her, as is evident from the statements of the witnesses. Therefore, when there is material revealing her complicity in otherwise indulging in subjecting the respondent no.2 to cruelty by hurling abuses in filthy language and even harming her physically, the petitioner will have to face the trial.

13. In view of such peculiar state of affairs, we dismiss the writ petition.

14. We quantify the fees of learned advocate for the respondent no. 2 – Mr. Niraj P. Chudiwal to be Rs.3,000/- (Rs. Three Thousand), to be paid by High Court Legal Services Sub-Committee at Aurangabad.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/