

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41932 of 2016

Arising Out of PS. Case No.-99 Year-2014 Thana- GOVINDGANJ District- East Champaran

Nirmala Devi @ Nirmala Pandey W/o Late Suryadeo Pandey, D/o Brahamdeo Pandey Resident of Village -Pakridayal P.S- Pakridayal, Distt- East Champaran.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Jitendra Kumar Giri, Advocate Mr. Kishore Saurabh, Advocate
For the Opposite Party/s	:	Mrs. Asha Devi, APP
For the Informant	:	Mr.Abhishek Kumar, Advocate Mr.Hemant Ray, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 13-01-2026 Heard learned counsel for the petitioner and learned counsel for the State.

2. This application has been filed on behalf of the petitioner to quash the order dated 19.02.2016 passed in Trial No. 1002 of 2016 in connection with Govindganj P.S. Case No. 99 of 14 whereby the application preferred by the petitioner under Section 239 of the Cr.P.C was rejected.

3. As per the prosecution case, the informant one Sashi Shree @ Moni had stated that she was a teacher in D.P.S school and her husband, namely, Braj Kishore Prasad was employed as a loan officer in the State Bank of India. It is alleged by the informant-wife that the her husband Braj Kishore



Prasad used to come to her house and subsequently had proposed for marriage with the informant before her parents and fraudulently convinced the parents of the informant. The informant states that her marriage with the aforesaid Braj Kishore Prasad was solemnized according to the Hindu traditions, however the informant later came to know that her marriage was an inter caste marriage. The informant thereafter states that she decided to continue living with her husband at Motihari and subsequently she also became pregnant. The Informant thereafter alleges that she got information that whenever she went to her paternal home, her husband used to come along with another lady and later started living with her in the same house, however when the informant inquired about the said lady, it is alleged that, her husband said that she was his sister-Nirmala Pandey, the present petitioner. The informant alleges that her husband was having illicit relations with the petitioner and also with another lady who was living in Patna. The informant also states that the husband had compromised a criminal case wherein allegations of establishing sexual relations on the pretext of marriage was leveled against him.

4. Learned counsel for the petitioner submits that petitioner is not the relative of the main accused and still



she has been prosecuted under Section 498A of the I.P.C.

5. It is the case of the petitioner that she is neither married wife of Braj Kishore nor any relative of her husband moreover there was no act of commission or omission to bring the petitioner in ambit of case u/s 498A as well as other sections and that the petitioner is in no way concerned with the husband of the informant. The husband of the informant being a loan officer in S.B.I, assured the petitioner to grant loan and he called petitioner at home in presence of the informant to examine the required document for granting the loan to the petitioner.

6. It has been submitted by the learned counsel for the petitioner that the petitioner went at the home of Braj Kishore Prasad only when the informant was present at home and that the husband of the informant should not have called any customer at home, despite knowing that presence of a female customer at home was unpleasing to the informant. He next submits that the informant herself is not consistent and fair in making allegations against the petitioner as she alleged in the later part of the F.I.R. that her husband used to bring several women in the house in her absence and he was also facing trial due to his illicit relations with another lady of Patna.



7. The learned counsel for the petitioner further submits that the informant knew that her husband did not belong to her caste and that her husband was already married with Reshma Praveen in the year 2010 and was facing a Criminal Trial no. 2033/14 lodged by his first wife Reshma Praveen, still she married him and therefore the present informant herself is the second wife of Braj Kishore Pd., hence the marriage of the informant with Braj Kishore Prasad is itself void.

8. Lastly, the learned counsel submits that the informant has not made any allegations against the petitioner that she has performed marriage with her husband or whether she has been subjected to torture by the petitioner. Moreover, the responsible persons are the husband of the informant as well as the informant herself who did not await the decision of the court when case was pending but performed marriage in haste. Therefore, the material collected during the investigation are not enough to initiate trial against the petitioner and the allegations made in the F.I.R. are also not enough to prosecute the petitioner under section 498 A of I.P.C., and that the learned court has erred in rejecting the petition under 239 of Cr.P.C, it is a fit case where the petitioner should be discharged.

9. *Per contra*, the learned counsel for the



respondents have opposed the present application. Further the learned counsel for the State as well as learned counsel for the O.P. No. 2 have opposed the prayer of the petitioner but are not able to show that the petitioner is related to the family of the husband of the informant.

10. I have considered the submissions of the parties and perused the materials available on record.

11. The relevant Section 498A of I.P.C. reads as under:-

“[Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.]”

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”
(emphasis supplied)*

12. The Hon’ble Supreme Court in the case of ***Sunita Jha vs. State of Jharkhand and Anr.*** reported as **(2010) 10 SCC 190**, considering the earlier precedent in ***U. Suvetha vs. State*** reported as **(2009) 6 SCC 757** had held as under -

11. While construing the provisions of Section 498-A IPC in the given circumstances, **this Court**



observed that Section 498-A being a penal provision deserved strict construction and by no stretch of imagination would a girlfriend or even a concubine be a “relative”, which status could be conferred either by blood connection or marriage or adoption.

“18. ... If no marriage has taken place, the question of one being relative of another would not arise.” (U. Suvetha case [(2009) 6 SCC 757, SCC p. 765, para 18)

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14. We have considered the submissions made on behalf of the appellant and the complainant wife. It may be indicated that the husband Mukund Chandra Pandit has not been made a party to these proceedings. However, having regard to the view which we are taking, his presence is not necessary for disposing of the present appeal.
15. Section 498-A IPC, as extracted herein above, is clear and unambiguous that only the husband or his relative could be proceeded against under the said section for subjecting the wife to “cruelty”, which has been specially defined in the said section in the Explanation thereto. **The question as to who would be a relative of the husband for the purpose of Section 498-A has been considered in detail in U. Suvetha case [(2009) 6 SCC 757 : (2009) 3 SCC (Cri) 36] . We are entirely in agreement with the views expressed in the said case** and we agree with the submissions made on behalf of the appellant that the learned Judge of the High Court committed an error in bestowing upon the appellant the status of wife and, therefore, a member of Mukund Chandra Pandit's family. The doctrine of acknowledgment would not be available in the facts of this case. No doubt, there is direct allegation against the appellant of cruelty against Respondent 2, Asha Rani Pal, but as indicated in U. Suvetha case [(2009) 6 SCC 757 : (2009) 3 SCC (Cri) 36] , the same would enable Respondent 2 to proceed against her husband under Section 498-A IPC and also against the appellant under the different



provisions of the Hindu Marriage Act, 1955, but not under Section 498-A IPC.

16. *The appeal, therefore, succeeds and is allowed. The judgment of the learned Single Judge of the Jharkhand High Court impugned in this appeal is set aside and the cognizance taken against the appellant on 6-2-2006 by the learned Sub-Divisional Judicial Magistrate, Dumka, under Section 498-A IPC, is hereby quashed.”*

13. The Hon’ble Supreme Court in the case of ***Dechamma I.M. v. State of Karnataka***, reported as **2024 SCC OnLine SC 385**, had held as under

8. *This Court, in the case of U. Suvetha (supra), had an occasion to consider a question as to whether the girlfriend or a woman with whom a man has had romantic or sexual relations outside of marriage would be a “relative of the husband” for the purposes of prosecution under Section 498A of IPC.*
9. *This Court, after considering the earlier judgments of this Court and the dictionary meaning of a relative, observed thus:—*

“18. By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a “relative”. The word “relative” brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.”

10. ***It could thus be seen that this Court has, in unequivocal terms, held that a girlfriend or even a woman with whom a man has had romantic or sexual relations outside of marriage could not be construed to be a relative.***
11. *Apart from that for bringing a case under Section 498A of IPC, the material placed on record should*



show that the ill treatment was meted out by the husband or a relative, which is connected with non-fulfilment of demand of dowry.

12. *Taking the allegations at their face value in the FIR or even in the entire material placed in the charge-sheet, it will show that there is no averment or material to show that the appellant was in any way concerned with causing harassment to respondent No. 2 on account of non-fulfilment of demand of dowry.*

13. *In that view of the matter, we are of the considered view that the continuation of the criminal proceedings against the appellant herein would be nothing else but an abuse of process of law. We find that the present appeal deserves to be allowed.”*

14. A coordinate bench of this Court in the case of ***Kartikey Kumar v. State of Bihar***, reported as **2018 SCC OnLine Pat 6932**, wherein it was held as under -

9. *A perusal of the aforesaid provision would clearly show that whoever being a husband or a relative of the husband, subjects a woman to cruelty shall be punished with imprisonment which may extend to three years or fine or both. The persons, according to this provision, who can be held liable for prosecution for an offence under Section 498A I.P.C., have to be the husband or the relative of the husband and nobody else. Admittedly, the applicants herein are neither the husband nor relative of the husband. That being so, the question would be as to whether they can be held responsible for committing an offence under Section 498A I.P.C. and whether they can be held responsible for committing such an offence.*

10. *Learned counsel for the complainant had placed reliance on the judgment of Rema Aggarwal (supra) to canvass a contention that while construing the provisions of Section 498A I.P.C. the expression used therein should be construed*



liberally so as to give full effect to the purpose for which Section 498A I.P.C. was brought into the statute book.

11. *If we analyze the judgment in the case of Rema Aggarwal (supra), we find that in the said case the question was as to whether the accused would fall within the definition of “husband” as used in Section 498A I.P.C. as it was found that the complainant therein Rema Aggarwal was not married to the accused person, it was not a valid marriage as she was staying with him when the first wife of the accused was alive and there was no dissolution of the marriage with the first wife. The question was as to whether a person who keeps a woman with him, treats her like his wife even though without conducting a marriage can fall within the definition of husband for prosecution under Section 498A I.P.C. It is in the backdrop of the aforesaid factual aspect of the matter that the judgment in question was rendered in the case of Reema Aggarwal (supra) and the principle was that Section 498A I.P.C. should be given liberal interpretation so that the principle of purposive construction and mischief rule are given effect to. In the said case of Reema Aggarwal, import and meaning of the word “relative” appearing in Section 498A I.P.C. has not at all been considered. On the contrary in the case of U. Suvetha (supra) apart from the fact that the judgment rendered in the case of Reema Aggarwal (supra) was considered the meaning of the word “relative” as appearing in Section 498A I.P.C. was taken note of, the principle of law laid down in the case of Reema Aggarwal is discussed and thereafter in Paragraph 9, 10 it has been held that the word “relative” must be assigned the meaning as it is commonly understood and the principles of strict interpretation has to be made applicable while interpreting a penal provision. In fact the principle discussed in Paragraphs 9 and 10 reads as under:—*

“9. The word “cruelty” having been defined in terms of the aforesaid



Explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498-A of the Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to be the “husband” or his “relative”. Either the husband of the woman or his relative must have subjected her to cruelty within the aforementioned provision. If the appellant had not (sic) been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498-A of the Penal Code.

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.”

12. Thereafter, meaning of the word “relative” appearing in various dictionaries have been taken note of and it has been held that the word “relative” would ordinarily mean father, mother, husband or wife, son, daughter, brother, sister, nephew, niece, grandson etc. It primarily includes a person related by blood, marriage or adoption



and not a friend or any other person. This judgment in the case of U. Suvetha has been again considered in the case of Sunita Jha (supra) and it has been held that the provisions of Section 498A is clear and unambiguous and after taking note of the law laid down in the case of U. Suvetha (supra), the principle therein has been affirmed. Again, in the case of Gurmit Singh (supra) the judgment in the case of U. Suvetha is considered, another judgment of the Supreme Court wherein the expression “relative” has been used i.e. in the case of Vijeta Gajra v. State of NCT of Delhi— (2010) 11 SCC 618 is taken note of and in Paragraph 9 the principle has been crystallized in the following manner—

“9. There was a reference made in this application by the appellant for quashing the summons arising out of the complaint dated 15.4.2008 and also to Criminal Miscellaneous Petition No. 2153 of 2008. The High Court had passed the order disposing of it since the State's Counsel had agreed to provide copy of the complaint and had further stated that in the event the FIR was registered, the applicant would be informed of this fact and no coercive action would be taken against her till then. In her application there was a statement that she did not even belong to the family of the complainant, her husband or any of their relatives and that all the allegations were palpably false. It was then stated that the writ petition was filed which came to be disposed of by the High Court. It seems that the complainant sought the direction to implead herself in the writ petition-cum-Section 482 CrPC application filed by the appellant.”

13. *From the aforesaid legal principles it is very clear that a relative has to be either by virtue of blood relationship or a relationship that arises on account of marriage or adoption and not otherwise. In this case, the relationship between*



Vijay Lal husband of the complainant and the present applicants is neither by virtue of any blood relation nor by marriage or adoption. On the contrary, their relationship is a friendly relationship and they do not fall in the category of relative, as laid down in the judgments indicated hereinabove. This principle has been followed by various High Courts in the judgments cited before us i.e. by this Court, Jharkhand High Court, Madhya Pradesh High Court and the Punjab and Haryana High Court.

14. *During the course of hearing, a judgment of the Gujarat High Court in Cr. Misc. Application No. 468 of 2010 (Leenaben Virendrabhai Verma v. State of Gujarat & 1) was brought to our notice to say that in view of this judgment the application is liable to be dismissed. We, with due respect to the Bench, would like to differ from the aforesaid judgment for the simple reason that in this judgment none of the judgments of the Supreme Court, as is detailed hereinabove, are taken note of or interpreted. On the contrary, the said judgment deals with certain extra marital relationship and the fact as to whether the accused therein was having the relationship of husband of the complainant and we are of the view that in the light of the law laid down by the Supreme Court the said judgment may not be made applicable.”*

15. Now turning to the facts of the present case, it is patently clear that the petitioner would not fall within the meaning of ‘relative’ under section 498-A of the IPC. Therefore the continuation of the criminal proceedings *qua* the petitioner would amount to abuse of the process of law. The criminal law has to be construed in the strict sense and since the petitioner is not a relative of the husband, the provisions of section 498-A



can not be attracted in the facts of the present case.

16. Therefore, considering the aforesaid discussions and the law laid down by the Hon'ble Supreme Court, the order dated 19.02.2016 passed in Trial No. 1002 of 2016 in connection with Govindganj P.S. Case No. 99 of 14 is hereby quashed *qua* the petitioner only.

17. This application stands allowed.

(Sandeep Kumar, J)

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