

04.10.2016 passed by Judicial Magistrate First Class, Gwalior in Criminal Case No. 5422/2016 wherein the trial Court has framed charge against the petitioners under sections 498-A, 323 and 34 of IPC.

2. Prosecution story, in short, is that complainant Pushpa was married with the petitioner No.1 on 2.3.1995. On the said wedlock, three daughters have born, viz., Richa aged 19 years, Vaishali aged 16 years and Namrata aged 12 years. Soon after marriage, the complainant started torturing the petitioner for residing separately from the parents, who are old and infirm. When the petitioner refused to leave separately, the complainant started mental and physical cruelty in order to blame the petitioner and his parents in the society.

3. On 23.6.2008, the complainant attempted to kill mother of the petitioner and the matter was reported to Police. The complainant on 2.7.2016 lodged a complaint against the petitioners but there is no single word regarding demand of dowry, despite the Police had registered case under sections 498A, 323 and 34 of IPC. After registration of FIR, the investigation has been carried out but in the statement recorded under section 161 Cr.P.C., there is no allegation of demand of dowry.

5. It is submitted by learned counsel for the petitioners that the complainant herself committed cruel behaviour with the petitioners, therefore, decree of divorce has been passed by the Family Court in favour of the petitioners. The complainant was habitual in committing cruel behaviour with the petitioners and his family members. More so, it is submitted that the allegations are vague in nature especially those pertaining to demand of dowry as there is no ingredient of demand of dowry, therefore, no case is made out under section 498-A, 323, 34 of IPC. It is further submitted that false allegations have been levelled against the petitioners. Hence, prayed for quashing of the charge and the entire proceedings.

6. Per contra, learned counsel for the State submitted that the decree sought of divorce is ex-parte, therefore, only on account of aforesaid decree of divorce, no presumption can be drawn against the complainant. Therefore, prayed for dismissal of the petition.

7. Heard learned counsel for the parties and perused the material available on record.

Section 498-A of IPC reads as under:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—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

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three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means— (a) any willful 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.”

8. A bare perusal of the above provision, especially the explanation of the term cruelty elicits that the same is divided into two categories. The first is willful conduct of such nature which is likely to drive the woman to commit suicide or to cause grave injury or danger of life, limb or health (whether mental or physical) of the woman whereas the second category is harassment with a view to coerce her or any of her relative to meet any unlawful demand of any property or valuable security or on account of failure by her or any person related to her to meet such demand.

9. On the anvil of the aforesaid provision, it is apparent that no allegation of any kind of cruelty or demand of dowry is missing, therefore, the provisions of Section 498A of IPC are not attracted.

10. For the allegation of cruelty to qualify the test of section 498A, it is necessary that cruelty alleged is of such nature which is

likely to drive the complainant to commit suicide or to cause grave danger of her life, limb or health (mental or physical) or such harassment is meted out to the complainant with a view to coerce her or any of her relative to meet any unlawful demand for property or valuable security. The allegations as reflected in the FIR do not in the considered opinion of this court satisfy the stringent definition of cruelty contained in Explanation (a) to section 498 A of IPC.

11. In view of above, it appears that the Judicial Magistrate First Class has erred in framing the charge against the petitioners. Accordingly, this court deems it appropriate to quash the charge framed against the petitioners and the entire consequential criminal proceedings so far as it relates to the petitioners.

12. Resultantly, the Criminal Revision filed under Sections 397, 401 of Cr.P.C. is hereby allowed. The charge framed against the petitioners and the entire proceedings pending before the trial Court in Criminal Case No. 5422/2016 are hereby quashed.

(Rajeev Kumar Shrivastava)
Judge