

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

M.Cr.C. No. 40377/2018

Bachchan & others

Petitioners

Vs.

State of MP & another

Respondents

Shri Akash Rathi learned counsel for the petitioners.
Shri Sandeep Mehta learned counsel for the
respondent/State.
Shri Abhishek Malviya learned counsel for respondent
no.2.

Whether approved for reporting :

J U D G M E N T

(Delivered on 2/5/2019)

By this revision petition under Section 482 of Cr.P.C. petitioners have prayed for quashing of FIR as also charge sheet.

2/ Petitioners no. 1 & 2 are father-in-law and mother-in-law of complainant and petitioner no. 3 is husband of complainant (respondent no.2).

3/ Respondent no. 2 had lodged complaint on the basis of which FIR dated 30th April, 2018 in police station Mahila Thana Indore was registered relating to commission of offence under Sections 498A, 294, 323, 506 and 34 of IPC. The allegation in the FIR is that respondent no. 2 was married to petitioner no. 3 on 23/1/2014 and allegation against petitioners is in respect of demand of dowry of Rs. 5 lakhs and of harassment. On the

basis of FIR, investigation has been done and challan has been filed before JMFC Indore in Case No. 23559/18 and charges have been framed against petitioners for commission of offence under Sections 498A, 294, 323, 506 Part II of IPC vide order dated 29/11/2018.

4/ Learned counsel for petitioners submits that since in the reply respondent no. 2 has taken the stand that marriage is null and void therefore, provisions of Section 498A IPC will not be attracted and that in the statement recorded under Section 161 of Cr.P.C. there is no specific allegation and respondent no. 2 is an educated lady who has falsely implicated all family members including father-in-law and mother-in-law.

5/ As against this learned counsel for respondent no. 2 opposing the prayer submits that petitioners had not disclosed that it is a second marriage and marriage subsists till it is declared null and void therefore, offence under section 498A of IPC is made out and that on account of alleged demand of dowry and harassment the FIR against the petitioners has rightly been registered.

6/ Learned counsel for State has also supported the stand of respondent no.2.

7/ Having heard the learned counsel for parties and on perusal of the record it is noticed that marriage between petitioner no. 3 and respondent no. 2 is not in dispute. Respondent no. 2 in her objections before this court has stated that marriage between petitioner no. 3 and respondent no. 2 is null and void since petitioner no. 3 was already married to one Ms. Nisha Mishra but such a stand of respondent no. 2 would not vitiate the proceedings under Section 498A of IPC because

the marriage between petitioner no. 3 and respondent no. 2 has not been declared null and void till now by any court of competent jurisdiction.

8/ Supreme court in the matter of **Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad & another** reported in (2013) **2 SCC 137** while considering the similar issue has held as under:

“19. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a “relationship in the nature of marriage” would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed

on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005. “

9/ Similarly in the matter of **Reema Aggrawal Vs. Anupam & others reported in (2004) 3 SCC 199** has held that in absence of definition of ‘husband’ to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as ‘husband’ is no ground to exclude them from purview of Section 304 B or 498A of IPC. In this regard it has been held that:

“17. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the Evidence Act) were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The

legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. 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 coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B-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 his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

10/ In the matter of **A. Subash Babu Vs. State of A.P. And another** reported in **(2011) 7 SCC 616** the Supreme court has held that decision of High court that criminal prosecution under section 498A IPC is not maintainable in so far as she is his

second wife and hence no legal status is not a good law by observing as under:

“16. This Court finds that the High Court has quashed the proceedings pending before the learned Magistrate under Section 498A of IPC on the spacious ground that the marriage of the appellant with the respondent no. 2 is void and as respondent no. 2 is not the wife, she was not entitled to lodge first information report with the police for commission of offence u/s. 498A IPC and on the basis of police report, cognizance of the said offence against the appellant could not have been taken by the learned Magistrate. Such reasoning is quite contrary to the law declared by this Court in Reema Aggarwal Vs. Anupam and others (2004) 3 SCC 199. After examining the scope of Section 498A of the Indian Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there was no valid marriage the question of dowry does not arise, this Court speaking through Hon'ble Mr. Justice Arijit Pasayat, has held as under:-

Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? 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 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B 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 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

11/ This court also in the matter of **Praveen Choube and others Vs. State of MP and another** reported in **(2012) 2 MPHT 270** considering the similar controversy has held as under:

"10. In the lifetime of spouse if any of them either husband or wife got married with other then by virtue of section 5(i) read with section 11 of Hindu Marriage Act, 1955 such marriage could be declared to be void by the competent court in a petition filed in this regard. But unless obtaining such decree from the competent court in appropriate petition in this regard mere relying on the oral submission of any of the party at the stage of framing the charge the alleged marriage could not be held to be a void marriage. It is apparent from the facts of the case at hand that neither the applicant no. 1 nor the respondent no. 2 had filed any such petition and got such decree of divorce till today, thus in such premises,

at this stage, it shall be assumed that the aforesaid alleged marriage of respondent no. 2 with applicant no. 1 is still subsisting and could not be treated to be void. At the stage of the framing of the charge the court has not to decide the validity of the alleged marriage of respondent no. 2 with applicant no. 1 but in view of their marital relation as husband and wife and available situation of the case according to which the applicant no. 1 by getting married with respondent no. 2 in accordance with the rite and and ritual of Hindu community placed the stigma on her life. Thus before recording the evidence and adjudication of the case on merits at the stage of framing the charge it could not be said tht she being illegally wedded wife on her report the applicants could not be prosecuted for the offence of Section 498-A of the Code and Section 3/4 of the Act. As such till declaration of their alleged marriage void by the competent court they should be treated to be husband and wife.

12/ So far as judgment in the case of **Shivcharan Lal Verma Vs. State of Madhya Pradesh** reported in **(2007) 15 SCC 369** is concerned, in view of subsequent judgments noted above, petitioner is not entitled to the benefit of said judgment.

13/ Andhra Pradesh High court in the matter of **Nalla Thirupathi Reddy and others Vs. State of Telangana (2015) Cri.L.J. 2479** taking note of both the judgments of the Hon'ble Supreme court has held that subsequent judgment in the case of Subhas Babu (supra) is to be followed.

14/ Having regard to the aforesaid legal position, I am of the opinion that the prosecution of petitioners under Section 498A IPC cannot be quashed on the mere plea that marriage between petitioner no. 3 and respondent no. 2 is null and void.

15/ The second ground of attack of petitioners is that there is no material to make out the offence under sections 498A, 294, 323 and 506 Part II IPC. The record reflects that not only

petitioner no. 3 i.e. husband has been implicated in the matter but his aged parents petitioners no. 1 & 2 have also been implicated.

16/ Supreme court in the matter of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another** reported in **AIR 2013, SC 181** has noted that in the matrimonial dispute, there is tendency to involve the entire family members of the household by observing as under:

“20. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“12. There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered

helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the Judges in this matter was that the courts would not encourage such disputes.

22. In yet another case reported in [B.S. Joshi & Ors. vs. State of Haryana](#) it was observed that:

“14. There is no doubt that the object of introducing Chapter XX-A containing [Section 498-A](#) in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. [Section 498A](#) was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry.

But if the proceedings are initiated by the wife under [Section 498A](#) against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, [Section 320](#) Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

23. In the instant matter, when the complainant and her husband are divorced as the complainant-wife secured an ex-parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant’s husband and

whether continuing with this proceeding could not have amounted to abuse of the process of the court. The High Court, however, seems not to have examined these aspects carefully and have thus side-tracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the magistrate conducting the trial.

24. In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of [Ramesh vs. State of Tamil Nadu](#) that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect was although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498A and Section 3/4 Dowry Prohibition Act against the appellants who are sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as

it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

17/ In the matter of **Chandralekha and others Vs. State of Rajasthan and another** reported in **(2013) 14 SC 374**, the Supreme court while maintaining the proceedings against husband and quashing it against mother-in-law and sister-in-law has held that :

“9. We must, at the outset, state that the High Court’s view on jurisdiction meets with our approval and we confirm the view. However, after a careful perusal of the FIR and after taking into consideration the attendant circumstances, we are of the opinion that the FIR lodged by respondent 2 insofar as it relates to appellants 1, 2 and 3 deserves to be quashed. The allegations are extremely general in nature. No specific role is attributed to each of the appellants. Respondent

2 has stated that after the marriage, she resided with her husband at Ahmedabad. It is not clear whether appellants 1, 2 and 3 were residing with them at Ahmedabad. The marriage took place on 9/7/2002 and respondent 2 left her matrimonial home on 15/2/2003 i.e. within a period of seven months. Thereafter, respondent 2 took no steps to file any complaint against the appellants. Six years after she left the house, the present FIR is lodged making extremely vague and general allegations against appellants 1, 2 and 3. It is important to remember that appellant 2 is a married sister-in-law. In our opinion, such extra ordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by respondent 2 against appellants 1, 2 and 3, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, respondent 2 has tried to rope them in this case along with her husband. We are of the confirmed opinion that continuation of the criminal proceedings against appellants 1, 2 and 3 pursuant to this FIR is an abuse of process of law. In the interest of justice, therefore, the FIR deserves to be quashed insofar as it relates to appellants 1, 2 and 3. “

18/ Similarly in the matter of Neelu Chopra and another Vs. Bharti reported in **(2009) 10 SCC 184** while quashing the proceedings against father-in-law and mother-in-law has observed as under:

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such

circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants. “

19/ Considering the case in the light of the aforesaid pronouncements and after minute perusal of the challan it is noticed that the main grievance of respondent no. 2 is as against petitioner no. 3 who had allegedly contracted second marriage with respondent no. 2 without disclosing the fact of earlier marriage. The allegations are mainly against petitioner no. 3 but alongwith him, the petitioners no. 1 and 2 i.e. father-in-law and mother-in-law have also been roped in. Petitioners no. 1 & 2 are aged persons and for want of any specific allegation or disclosure of precise incident against them it would be abuse of the process of law to allow their prosecution for alleged offence.

20/ Hence the M.Cr.C. is allowed in part by quashing the FIR, charge sheet as also the order framing charge in respect of petitioners no. 1 & 2 but without interfering in the prosecution of petitioner no.3.

M.Cr.C. is accordingly partly allowed.

C.C. as per rules.

(Prakash Shrivastava)
Judge

BDJ