

(2017) 05 GUJ CK 0031
In the Gujarat High Court
Case No : 12520 of 2010

JABARCHAND BOHRA & 3

APPELLANT

Vs

STATE OF GUJARAT & 2

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 323](#), [Section 506\(2\)](#), [Section 498-A](#) - Abettor present when offence is committed -
Punishment for voluntarily causing hurt - Punishment for criminal ,intimidation
[Dowry Prohibition Act, 1961](#), [Section 3](#),
[Section 7](#) - Penalty for giving or taking dowry - Cognizance of offences

Citation : (2017) 05 GUJ CK 0031

Hon'ble Judges : Biren Vaishnav

Bench : Single Bench

Advocate : MAHENDRA U VORA, ?G R MANAV,?SANJAY PRAJAPATI, ?HIMANSHU PATEL

Judgement

1. Both these applications invoking Section 482 of the Code of Criminal Procedure have been filed against the complaint lodged by Daxaben-respondent No.3 in both these applications. Respondent No.3-Daxaben Ravindrabhai Shrimadi is the wife of one Ravindrabhai Shrimadi, whom she married on 15.05.2002.
2. Criminal Miscellaneous Application No. 12520 of 2010 has been filed by the brother-in-law, father-in-

law and the mother-in-law of Daxaben, whereas, Criminal Miscellaneous Application No. 12787 of 2010 has been filed by the Sisters-in-law - Saarika and Shraddhaben and their husbands Ashwinkumar and Vijaykumar respectively. Daxaben-the complainant, apart from filing a complaint under Section 498- A, Section 323, 506(2) read with Section 114 of the Indian Penal Code and under Sections 3 and 7 of the Dowry Act against the husband has roped in the other family members in such complaint. These applications, therefore, have been filed by the family members except the husband.

3. The complainant-Daxaben, has filed C.R No.I-42/2010 with the Mahila Police Station at Ahmedabad on 29.07.2010. The complaint is annexed with the memo of the application, when read unfolds the following story:

3.1 According to the complainant-Daxaben, she is staying at Ahmedabad. Out of the wedlock with husband Ravindra, she has a son who is one and a half year old and a daughter Nandini aged about seven years. According to the complainant, she married Ravindra and after the marriage, she shifted to the matrimonial home at Mount Abu. Ravindra's family was a joint family. The present applicants of both these applications were residing together.

3.2 According to the complainant, right from the inception after marriage, she was being harassed by the family. All of them together

would taunt her, make her do daily chores like cleaning of toilet and would beat her etc,. The complainant further indicated in her complaint that the father-in-law and the mother-in-law had insisted that the ornaments that she was wearing and which she had brought on her marriage, be given to them as it was unsafe for the wife to wear such ornaments in a tourist place like Abu.

3.3 On repeated demand for money, her mother was compelled to part with large sums of money, buy a flat at Ahmedabad out of such funds. The husband shifted to Ahmedabad with his brother and wife- accused Nos. 4 and 5, applicants of Criminal Miscellaneous Application No. 12787 and applicants Nos. 1 and 4 of Criminal Miscellaneous Application No. 12787. Repeated attempts were made to taunt her under the pretext that they would get her husband married to her Bhabhi's sister. In the complaint, she narrates an episode which occurred in March 2010. When she was at Abu and her daughter was down with fever and son with Pneumonia, repeated prayers for the husband to come over to Abu failed. In order to get better medical treatment, when she went with her children to Ahmedabad the in-laws and the husband left Ahmedabad and it was her neighbours and acquaintances in Ahmedabad who gave her the necessary help that her children would get

appropriate treatment. This in short is the narrative of the complainant as stated in her complaint and apart from the other sections invoked Section 498-A against her in-laws and other relatives. The complaint was filed on 29.07.2010.

4. On record is also an objection filed under Section 13 of the Hindu Marriage Act of the husband- Ravindra Shrimadi before the appropriate Civil Court at Abu filed on 12.07.2010, seeking separation from his wife alleging that marriage has irretrievably broken down, and therefore, they need to separate by an appropriate decree of separation be passed. It may, however, be added that such objection is not relevant for the purpose of deciding the issue in the present case.

5. Mr Mahendra Vora, learned advocate appearing for the applicants in both these applications has contended that on bare reading of the complaint, it is evident that it cannot be said that the relatives of the husband are in any manner involved so as to come within the net of Section 498-A of the IPC . He further contended that the complaint does not disclose that an offence of the nature under Section 498-A has been made out. Mr Mahendra Vora, in support of his contention that the relatives have been roped in without any prima facie cause against them, as relied on the decisions of the Supreme Court in the case of Bhaskarlal Sharma and another vs. Monica reported in (2009) 10 SCC 604. He has also relied on a decision

reported in (2012) 10 SCC 741 in the case of Geeta Mehrotra and another Vs. State of Uttar Pradesh and Another. Mr Vora has further relied on a decision in a case of Shakson Belthissor Vs. State of Kerala and another reported in (2009) 14 SCC 466 to contend that once ingredients of Section 498 are not been made out, this Court in exercise of its power under Section 482 of the Cr.P.C quash such a complaint and prevent the abuse of process of law.

6. Mr. Sanjay Prajapati on the other hand appearing for Daxaben-the wife-the original complainant has contended that, reading of the FIR makes it apparent that wife has been treated cruelly at the hands of her in-laws. Sufficient material is evident on reading the complaint to suggest that she has been subject to cruelty. Harassment of the wife at the hands of the in-laws would certainly be a case, wherein, Section 498- A has rightly been invoked and the complaint, therefore, need not be quashed. He further contended that Section 482 of the Cr.P.C should not be invoked and the complaint be quashed when investigation into the matter still needs to be done.

7. Mr Himanshu Patel, learned APP contended that, Section 498-A has rightly been invoked by the wife that when the complaint is read admittedly the averments indicates that all of them were residing in a joint family at Mount Abu, and therefore, it is not a case where the family members have been just roped in. Mr Patel has categorically drawn my attention to the contents in the FIR and particularly to the

averments which read to the effect that the accused Nos. 2 to 5 were continuously pressurizing the wife to return to her parental home, that she should agree to a separation. That, the accused Nos. 4 and 5 the brother-in-law and his wife particularly wife of the brother-in-law had said that she wanted her sister to marry the husband. Such averments would lead one to the conclusion that Section 498-A has been rightly invoked.

8. Having given anxious consideration to the case on hand and having read the complaint in its entirety, what comes out from reading the complaint is that the complainant has made out and levelled allegations about the harassment, taunting and incidents where the in-laws have asked her to bring the dowry. The First Information Report when carefully perused, does indicate levelling of such allegations, however, merely allegations of harassment qua the in-laws do not state that they used to taunt and harass without giving specific opportunities except that of the accused No.5 impressing upon the complainant that she would want her sister to marry the husband, do not give such specific opportunities which meet the test of adequacy of law.

9. It will be in the fitness of things to reproduce Section 498-A of the Indian Penal Code. Section 498-A reads thus:

" 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 three years and shall also be liable to fine.

Explanation- For the purpose 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."

10. In the case of Bhaskarlal Sharma and another vs. Monica (Supra) the Supreme Court treated the complaint filed by the wife under Section 498-A of the Indian Penal Code. The explanation to Section 498-A which defines cruelty would amount to a 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 of the woman, or harassment of the woman, where such harassment is with a view to exercising her to meet any unlawful demand.

11. In order that an offence under Section 498-A is proved, the complainant must make an allegation of harassment to the extent, so as to, coerce her to meet

any unlawful demand of dowry or any wilful conduct on the part of the accused 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.

12 . On reading the First Information Report, in the facts of the case, a bare reading of the complaint makes it evident that, though, the in-laws-the present applicants have been roped in, nothing appears to have been stated in the complaint so as to lead wife to the conclusion that their act has driven the wife-Daxaben-the complainant to harass her to the extent as stated aforesaid.

13. Even in the case of Geeta Mehrotra and another Vs. State of Uttar Pradesh and Another (supra) it has been held that, when the First Information Report prima facie does not disclose or there is not enough material to suggest that the family members have brought forth a situation that cruelty is evident from their conduct, Section 498-A should not be invoked.

14. From a bare reading of the complaint, what is seen is that, the whole conduct of the complainant is eventually to rope in all the members of the family without assigning any specific role to each member of such family and to show as to how their conduct has resulted in having them committed cruelty.

15. Having found that the basic averments in the complaint so filed are missing, having relied on the judgments referred to by the learned advocate for the applicant, particularly, in those referred in the case of Geeta Mehrotra and Bhaskarlal Sharma, in exercise

of my extraordinary jurisdiction under Section 482 of the Cr.P.C, I deem it fit to quash the FIR in question.

16. For the foregoing reasons, both the applications are hereby allowed and the FIR being C.R No.I-42/2010 registered with the Mahila Police Station at Ahmedabad on 29.07.2010, against the present applicants is hereby quashed and set aside. Rule is made absolute to the above extent.