

(2014) 02 GUJ CK 0053

In the Gujarat High Court

Case No : Criminal Misc. Application No. 468 of 2010

Leenaben Virendrabhai Varma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 498A

Citation : (2015) 1 Crimes 786 : (2014) 2 DMC 656 : (2014) 2 GLR 1755 :
(2014) 4 RCR(Criminal) 949

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Japan V. Dave, Advocate for the Appellant; Hemant K. Makwana,
Advocate for the Respondent

Judgement

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R.R. Tripathi, J.—One, Leenaben Virendrabhai Verma, who is named as one of the accused in C.R. No. 1-79 of 2006 registered at Dahod Town Police Station has approached this Court contending that she is falsely implicated in the F.I.R. as an accused. The offence alleged in this F.I.R. is under Section 498A of the IPC and Section 114 of the IPC. Learned Advocate Mr. Japan V. Dave for the applicant strenuously invited attention of the Court to the averments made in the F.I.R. in detail. The learned Advocate for the applicant emphasized that the only averment regarding the present applicant is that, "the husband of the complainant (Rajesh Hanumansing Kshatriya) is having extramarital relation with the present applicant, and therefore, the husband and other accused, namely, Meeraben Hanumansing Kshatriya, mother; Hanumansing Ramdayalsing Kshatriya, father, and Ritasing Hanumansing Kshatriya, sister, had beaten the complainant and told her that husband may have relation with anybody but she must not mention the same to anybody". After beating she was driven away. But thereafter with the intervention of leaders of the community and village people the matter was compromised. But once again the husband, mother-in-law and

sister-in-law of the complainant again conveyed to the complainant that, "Rajesh will have affair with the present applicant and if she (complainant) wants to reside in the house, she may do so and for doing that she should bring a sum of Rs. 2,00,000 as dowry from her father." She was again beaten and driven away from the house. At present, the complainant is at her father's place for last about Vi month as set out in the complaint.

The learned Advocate for the applicant then invited attention of the Court to the averment made in the complaint that, "the applicant off and on told the complainant that she should go away from the place of her husband and that she (applicant) wants to marry him. Such utterances were made by the applicant which be investigated. The learned Advocate for the applicant submitted that Section 498A of the IPC is very clear and offence of Section 498A of IPC can be committed only by husband or relative of husband by subjecting woman (wife) to cruelty. The learned Advocate for the applicant submitted that the very fact that the applicant is not falling within the ambit of word "relative", she cannot be implicated as an accuse in the F.I.R., wherein offence under Section 498A of IPC is alleged.

(Emphasis supplied)

In this regard, the learned Advocate for the applicant placed reliance on a decision of the Hon"ble the Apex Court in the matter of U. Suvetha Vs. State by Insp. of Police and Another, . The learned Advocate for the applicant invited attention of the Court to the Head Note which reads as under:

"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 grand-daughter 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. By no stretch of imagination a girl friend or even a concubine of the husband in an etymological sense would be a "relative". The word "cruelty" having been defined in terms of Explanation appended to Section 498A 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 would not attract the wrath of Section 498A."

2. So far as the aforesaid judgment is concerned the Hon"ble the Apex Court had an occasion to observe in Para 10 as under:

"10. Appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged. A woman in terms of the aforementioned provision must be subjected to cruelty by her husband and/or his relative. The word "cruelty" has also been defined in the explanation appended thereto. It is in two parts. Clause (a) of the said explanation refers to a conduct which is likely to drive the woman to commit

suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); Clause (b) provides for harassment of the woman, where such 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.

It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry."

3. The learned Advocate reiterated that this judgment makes it very clear that the applicant cannot be implicated as an accuse in the complaint where offence alleged is under Section 498A of the IPC. In this regard learned Advocate invited attention of the Court to Para 12 of the judgment, which reads as under:

"12. 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."

The word "relative" has been defined in P. Ramanatha Aiyar Advanced Law Lexicon--Volume 4, 3rd Edition as under:

"Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act]."

The expression "RELATIVE" means a husband, wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act]

"RELATIVE" means in relation to the deceased--

- (a) the wife or husband of the deceased;
- (b) the father, mother, children, uncles and aunts of the deceased, and
- (c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act]

A person shall be deemed to be a relative of another if, and only if--

- (a) they are the members of a Hindu undivided family, or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means--

- (a) The mother, father, husband or wife of the individual, or
- (b) a son, daughter, brother, sister, nephew or niece of the individual, or

- (c) a grandson or grand-daughter of the individual, or
- (d) the spouse of any person referred to in Sub-clause (b) [Income tax Act].

"RELATIVE" means --

- (1) spouse of the person;
- (2) brother or sister of the person;
- (3) brother or sister of the spouse of the person;
- (4) any lineal ascendant or descendant of the person;
- (5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act]."

Random House Webster's Concise College Dictionary defines "relative" at page 691 to mean:

"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. 9 (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference: relevant: pertinent (usually fol. by to): two facts relative to the case. 9. correspondent; proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called.". 12. (of a musical key) having the same key signature as another key: a relative minor."

4. This Court has carefully gone through the contents of the complaint (F.I.R.). The affidavit in reply filed on behalf of Respondent No. 2, viz. Shilpaben, wife of Rajesh Kshatriya, the complainant herein and the judgment relied upon by the learned Advocate. This Court, on careful consideration has found that the said decision will not be applicable to the facts of the present case, because though girlfriend is not falling within the ambit of the word "relative", but she can still be an abettor to an offence under Section 498A of the IPC. In fact, the contents of the F.I.R. do reveal that this applicant is the root cause of the offence under Section 498A of the IPC and that is why she is required to be implicated, if not as a direct perpetrator of offence, then as an abettor to the offence under Section 498A of the IPC. This Court is of the opinion that the husband with his mother, father and sister is subjecting the complainant to cruelty only with a view to achieve the end result of "she--wife going away to make it possible for the husband to marry his girlfriend". This Court is also of the opinion that if the

applicant is not implicated in an F.I.R. of this nature, that will be miscarriage of justice, because the moment the role of the applicant is taken out, the complaint will be incomplete, because the demand of dowry is generated on account of illicit/extramartial relation of the applicant with husband of the complainant. It is very apparent that in the event the complainant is not able to satisfy the dowry demand she will be driven out under that excuse and husband of the complainant will then have fulfilment of his desire of marrying his girlfriend. If this is not abetment under Section 498A of the IPC, then what could be said to be abetment and it is sure that abetment is not expected only from relatives of husband; abetment could be from anybody including that of girlfriend of the husband and for that reason it may happen that it may be friend of mother-in-law or may be friend of father-in-law or sister-in-law, who will be having dominance in the family and every time they will be instigating the members of the family to subject the daughter-in-law to cruelty. If all these are allowed to be excluded from being implicated only on the ground that they are not "relatives" of husband, then possibly the very object of bringing Section 498A of the IPC on the Statute Book will stand frustrated. Therefore, this Court finds no substance in this application. The application is dismissed. Rule is discharged. Interim relief is vacated.

5. At this juncture, the learned Advocate for the applicant submitted that the applicant is married and is residing at Vadodara and for all this time she had protection of this Court. Therefore, a limited protection, at least, of asking the Police not to take coercive steps against her be granted. The request is found reasonable. The same is granted. The Police authorities shall restrain themselves from taking any coercive steps or action against the applicant in the course of investigation. At the request of the learned Advocate for the applicant it is clarified that the observations made by this Court shall not influence the learned Judge while deciding the matter on merits.