
(2018) 02 BOM CK 0018
In the Bombay High Court
Case No : 579 of 2017

Pallavi w/o Rajendra Dhadge

APPELLANT

Vs

Rajendra s/o Keshav Dhadge,

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 239](#), [Section 198](#), [Section 198\(2\)](#) - When accused shall be discharged - Prosecution for offences against marriage - Prosecution for offences against marriage
[Indian Penal Code, 1860](#), [Section 420](#), [Section 498A](#), [Section 323](#), [Section 504](#), [Section 497](#) - Cheating and dishonestly inducing delivery of property - Husband or relative of husband of a woman subjecting her to cruelty - Punishment for voluntarily causing hurt - Intentional insult with intent to provoke breach of the peace - Adultery

Citation : (2018) 02 BOM CK 0018

Hon'ble Judges : K.L.Wadane

Bench : Division Bench

Advocate : N.V.Gaware, M.C.Swami, B.A.Shinde

Final Decision : Dismissed

Judgement

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing. Heard learned counsel for the respective parties.
2. The petitioner has challenged the order, dated 21.7.2015, passed by the Judicial Magistrate, First Class, Court No. 11, Ahmednagar,

below Eh.24 in RTC No. 372 of 2014, by which application filed by respondent nos. 1 and 2 under the provisions of Section 239 of the Criminal Procedure Code is partly allowed and they have been discharged from the offences punishable under Sections 420 and 497 of the Indian Penal Code, on the ground that the petitioner had no locus standi to file the complaint for the offence punishable under Section 497 of the Indian Penal Code and there was no prima facie material to frame the charge for the offence punishable under Section 420 of the Indian Penal Code.

3. The aforesaid order was assailed by the petitioner in Criminal Revision Application No. 199 of 2015. The learned Additional Sessions Judge, Ahmednagar dismissed the Revision by its order, dated 25.1.2017 and the findings recorded by the learned Magistrate are confirmed. Hence this Writ Petition.

4. Brief facts of the case are as follows :

Respondent nos. 1 and 2 herein had been charged by Ahmednagar police vide Crime No. 536 of 2013. The Crime was registered on the basis of complaint filed by the petitioner alleging therein that on 23.5.2003 she married with respondent no.1. After the marriage, respondent no.1 never talked with the petitioner. She further alleged that from the date of marriage, respondent nos. 1 and 2 started illtreatment and harassment to the complainant. Respondent no.1 demanded amount of

Rs. Ten Lakh for purchase of new flat. On the basis of the complaint lodged by the petitioner, initially offences punishable under Sections 498A, 323, 504 of the Indian Penal Code came to be registered.

5. The investigating officer recorded the supplementary statement of the petitioner, in which she made certain allegations of illicit relations between respondent nos. 1 and 2 with further allegation that respondent no.1 deceived the complainant by certain facts. Therefore, offence punishable under Sections 420, 497, 504 of the Indian Penal Code came to be added.

6. Respondent nos. 1 and 2 have submitted application under the provisions of Section 239 of the Criminal Procedure Code for discharge. After hearing both the sides, the accused persons have been discharged from the offences punishable under Section 420 and 497 of the Indian Penal Code.

7. Mr. Gaware, learned counsel appearing for the petitioner submits that from the supplementary statement of the complainant, it is crystal clear that her husband respondent no.1 had illicit relations with respondent no.2 who is cousin mother-in-law of the informant. Therefore, from the supplementary statement of the complainant, it is crystal clear that offence punishable under Section 497 of the Indian Penal Code prima facie is established.

8. Mr. Gaware, learned counsel, at the

beginning of his arguments has conceded that there is no case for the offence punishable under Section 420 of the Indian Penal Code. During the course of arguments, Mr. Gaware, learned counsel, by referring to the provisions of Section 198 (2) proviso has submitted that in absence of the husband of respondent no.2, the complainant being care taker of respondent no.2 is authorized to file complaint for the offence punishable under Section 497 of the Indian Penal Code.

9. Learned counsel appearing for respondent nos. 1 and 2 has submitted that the petitioner has no locus standi to file complaint for the offence of punishable under Section 494 of the Indian Penal Code. Therefore, the learned Magistrate is barred from taking cognizance of alleged offence. Looking to the rival submissions of both the sides, a very short question is involved in the present matter i.e. whether the complainant can file complaint in view of the provisions of Section 198 (2) proviso of the Criminal Procedure Code . Section 198 of the Criminal Procedure Code reads as follows : -

" 198. Prosecution for offences against marriage--(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that--

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the

Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under [56][Section 494 or Section 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [57][or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1) no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 498 of the said Code;

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

..... "

10. Mr. Gaware, learned counsel submitted that in absence of husband of respondent no. 2, the complainant being member of the family, can file the complaint as the wording employed in proviso to Section 198 (2) of the Criminal Procedure Code is "some person".

11. Normally, complaint has to be filed by the aggrieved person. In absence of such, the Criminal Court cannot take cognizance. It is impossible to lay down any flexible rule for determining in every case whether the complainant is a person aggrieved by the offence alleged, it must be determined in each case according to its own circumstances whether the complainant can be said to be in a legal sense a person aggrieved.

12. On bare perusal of Section 198 (2) proviso of the Criminal Procedure Code, in absence of husband, some person, who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make complaint on his behalf. So, first requirement is that the complainant has to establish prima facie that she is caretaker of the woman i.e. respondent no.2 on her husband's behalf at the time when the alleged offence was committed and secondly such complaint was to be filed with the leave of the Court.

13. In the present case, by no stretch of imagination, the complainant can be said to be a person who is caretaker of respondent no.2 on behalf of her husband at the time of commission of alleged offence, nor the complainant had taken prior permission of the Court to file such complaint.

14. In such circumstances, I do not think that the complainant is authorized in law to lodge complaint on behalf of the husband of respondent no.2 or by herself in the capacity of care taker of respondent no.2.

15. I have gone through the reasons recorded by the learned trial Court as well as the learned Additional Sessions Judge, Ahmednagar and I do not find any illegality with the orders passed by the learned Magistrate, which is confirmed by the learned Additional Sessions Judge, Ahmednagar.

16. Consequently, there is no substance in the present Writ Petition. Criminal Writ Petition is liable to be dismissed and it is dismissed accordingly. No costs.