
(2006) 04 PAT CK 0049
In the Patna High Court
Case No : Cr. Misc. No. 33374 of 2003

Rahima Khatoon

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Citation : (2006) 04 PAT CK 0049

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the opposite parties 2 to 7 and. the learned Counsel for the State.

2. The petitioner filed a complaint case against her husband, opposite party No. 2, and his family members. The complaint alleged that she was married to opposite party No. 2 on 23.6.2000. Following harassment for the purpose of dowry, they were divorced. A panchayati followed thereafter when the petitioner on 20.8.2000 re-married opposite party No. 2 on payment on payment Den Mohar as specified in the complaint and an agreement was arrived at between the husband and the wife in presence of the "pan-dies" that he would not make any demands for dowry. The complaint alleges that the husband then treated the petitioner right for one 3-"ear when a child was also born. Then followed demands for a motorcycle and Rs. 5000/-. The petitioner arranged for her father to pay a sum of Rs. 4200/- to her husband and regretted the inability to give him a motorcycle. The petitioner's husband then assaulted her with his legs and fists and abused her and her daughter and finally pushed them out of the matrimonial home on 20.6.2002. She expressed that she felt like committing suicide because of the treatment meted out to her.

3. The court below then proceeded to enquire into the matter and arrived at its satisfaction that no offence u/s 498A of the Penal Code was made out because the validity of the re-marriage of the complainant appeared to be questionable in Mahommedan law. Cognizance was thus taken only u/s 323 of the Penal Code.

The petitioner, aggrieved with the same, preferred Cr. Rev. No. 35/2003 before the Additional Sessions Judge, Kishanganj. The Revisional court at this stage dwelled on the provisions of Mahommedan Law for a valid remarriage and arrived at its conclusion that because the remarriage of the petitioner to opposite party No. 2 was solemnised before completion of the Iddat period, and that the procedure for remarriage in Mahommaden Law had not been complied with, the court below rightly found that the marriage was not legal and therefore rightly did not take cognizance u/s 498A of the Penal Code.

4. Learned Counsel for the petitioner submitted that the Court below erred in throwing out the Complaint u/s 498A on the premise of the alleged invalidity of the marriage which itself was a matter to be adjudicated during trial.

5. Learned Counsel for opposite parties 2 to 7 in support of the impugned order submitted that once a prim a facie finding of an invalid marriage of Mahommedan Law was arrived at, Section 498A will have no application. The impugned orders therefore called for no interference. There was no justification to compel the opposite parties 2 to 7 to the tribulation of a trial when the basic foundation for the trial was wanting.

6. The Court has given its anxious consideration to the submissions of the Counsels for the parties. The matter revolves around the statutory provisions of Section 498A which the Court: presently considers proper to set out below:

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"

(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.

7. It is apparent that the primary requisite for application of Section 498A of the Penal Code is that the person concerned must be the husband or the relative of the, husband. He or they must subject the woman concerned to cruelty. Cruelty will include inter alia the wilful conduct likely to drive the woman to commit suicide or injury to health, mental or physical In the facts of this case, the Court is satisfied that the complaint clearly discloses material of a nature fit to go for trial u/s 498A of the Penal Code also.

8. The only question that survives for consideration now is whether the court

below and the Revisional court were right in their conclusion that; since the remarriage of the petitioner to the opposite party No. 2 was not in consonance with the provisions of Mahommeden Law, there was no relationship of husband and wife between them and consequently Section 498A of the Penal Code had no application.

9. Whether the provisions and procedures of the Mahommeden Law with regard to remarriage had been followed or not would itself be a subject matter for trial to be decided on the basis of materials and evidence that would be led before the court. Added to this could be the question whether the petitioner and opposite party No. 2 did reside as husband and wife or not irrespective of the question of validity of the marriage in Mohammedan Law, This is again an issue which would have to be decided on the basis of the materials and evidence before the trial court.

10. The aforesaid conclusion of this Court finds support from a judgement of the Supreme Court reported in Reema Aggarwal Vs. Anupam and Others, . In the said case, the defence was that the charge u/s 498A of the Penal Code was misconceived as the same presupposes a valid marriage. It was required to be shown that the victim woman was the lawfully married wife of the accused. Since the appellant had admittedly married the accused during the subsistence of his marriage to his first wife there was in " fact; no valid and legal marriage between the appellant and the accused. Section 498A of the Penal Code therefore had no application. The High Court held that in view of failure of the prosecution to establish a lawful marriage, the charge u/s 498A of the penal Code could not be sustained.

11. The Hon''ble Supreme Court considering the application of Section 498A of the Penal Code in the background of the defence of an invalid marriage held that the concept of marriage to constitute the relationship of husband and wife may require strict interpretation where claim for civil rights, right to property etc. felt all consideration and a liberal approach, a different perception, cannot be an anathema when the question of curbing a social, evil is concerned. There can be no doubt that Section 498A of the Penal Code was promulgated to curb a social evil Their Lordships then went on to hold in the relevant extract of paragraph 18 of the judgement as extracted hereinafter:

18... It would be appropriate to construe the expression "husband" to cover a person who enters into marital relation 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....

12. Applying the principle of suppression of mischief rule as enumerated in the Haydon Case (1584)3 Co Rep 71 their Lordships arrived at the conclusion that whether the offence be made out or not in a particular case had to be the subject

matter of a trial

13. In the facts and circumstances of the case, this Court is satisfied that the order dated. 21.1.2003 passed by the Judicial Magistrate and the order dated 27.9.2003 of the revisional court are not sustainable in law. The same are accordingly set aside.

14. The matter is now remanded to the court of Judicial Magistrate, 1st Class, Kishanganj to proceed afresh in accordance with law.

15. The application stands allowed.