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In the Calcutta High Court

Case No : C.R.R. No. 3671 of 2014

Subrata Mazumder and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 406, 498A, 498-A

Citation : (2015) CriLJ 4531

Hon'ble Judges : Sudip Ahluwalia, J.

Bench : Single Bench

Advocate : Rajdeep Majumder and S.K. Majarul Islam, for the Appellant; Suranjan Mondal, Anit Banerjee and Mousumi Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Sudip Ahluwalia, J.—In this case the two petitioners, who are the accused persons in BGR Case No. 1719 of 2004 arising out of Regent Park P.S Case No. 76 of 2004, dated 03.05.2004 under Section 498A /406 of the Indian Penal Code, have challenged the order passed by the Learned Judicial Magistrate 1st Court, Alipore, South 24-Parganas on 28.10.2014. By virtue of the impugned order an application filed by the petitioners for being discharged in the case was rejected, and the matter fixed for framing of charge. It may be mentioned that charge-sheet in the case was submitted against the petitioners who are the husband and mother-in-law respectively of the de facto-complainant/opposite party No. 2.

2. Their contention is that the FIR lodged against them, as well as the charge-sheet subsequently submitted were untenable as no offences under Section 498A /406 of the IPC were made out from either the contents of the original FIR, or from the evidences subsequently collected during investigation.

3. The petitioners have drawn attention of this Court to the fact that it was alleged in the FIR lodged on 03.05.2004 that the accused persons had wrongfully

retained in their custody the ''Streedhan'' articles of the complainant including her ornaments etc. apart from her savings in the form of "Kisan Vikas Patras". Yet the de facto-complainant had suppressed the fact that even before lodging of the FTR, she had already got the bank locker jointly held by her with the petitioner No. 1 to be frozen, and so her allegations that her valuable articles therein were being wrongfully withheld from her by the petitioners is false.

4. The Petitioners relying upon a decision of the Apex Court in U. Suvetha Vs. State by Insp. of Police and Another, , have contended that the proceedings against them are not tenable on account of the ratio of this decision, the relevant extracts of which are as follows -

"5. Section 498-A of the Penal Code reads as under:

"498-A. 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 purposes 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."

9. The word "cruelty" having been defined in terms of the aforesaid Explanation, 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, in our opinion, would not attract the wrath of Section 498-A of the Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to cruelty within the aforementioned provision. If the appellant had not (sic) been instigating the husband of the first informant to torture her as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498A of the Penal Code.

(Emphasis added).

5. Relying upon the observations of the Supreme Court in paragraph 9 of the aforesaid decision, the petitioners have urged before this Court that the FIR discloses that the reason for discord in the matrimonial household the de facto-

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complainant was on account of her remaining in employment and there is no allegation to the effect that she was subjected to any physical or mental torture or assault in pursuance of any monetary demand or other dowry demand. It has also been asserted on behalf of the Petitioners that there is no medical evidence on record to indicate that the torture allegedly inflicted upon the de facto-complainant was of such nature as to cause grave injury or danger to her life, limb or heath (whether mental or physical) which is necessary ingredient in terms of explanation (a) to Section 498A of the IPC.

6. They have also placed the judgments of the Supreme Court in Bhaskar Lal Sharma and Another Vs. Monica, in which the appellants were the parents-in-law of the de facto-complainant who had lodged the complaint against them as well as against her husband under Section 498A /406 of the IPC. The appellants had moved the High Court for quashing the summoning order in that complaint case, but the same was dismissed.

7. When the matter came up before the Apex Court in appeal, the Court in passing its aforesaid judgment specifically scrutinized the allegations against both the appellants being the father-in-law being mother-in-law of the complainant victim, and thereafter tested the same as against the requirement of Section 498A of the IPC. The relevant extracts from the aforesaid judgment are as follows:

"36. There are many more e-mails exchanged between the couple as also their parents. However, in none of them any allegation with regard to cruelty or breach of trust had been made. Such allegations are made for the first time in the complaint petition as also in the application for grant of maintenance.

The respondent, in her complaint petition, made the following allegations against the appellants, which we may notice:

Appellant 1

Shri Bhaskar Lal Sharma - Father-in-law

1. He threatened the complainant to finish her relationship with Mr. Vikas Sharma as she was trying to control their house, children and the business (page 57).

2. He offered divorce by mutual consent on the payment of Rs. 25 lacs function of Engagement Ceremony as compensation. He also refused to return the clothes/ jewellery unless the divorce by mutual consent is granted by the complainant (Page 63).

Appellant No. 2

Smt. Vimla Sharma -- Mother-in-law

1. She sent only two unmarried girls for Shagun instead of seven (p. 42).

2. She said that she would like the function of engagement to be organized in a five-star hotel (p. 43).

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3. She also advised the respondents to hold the marriage ceremony at ISKCON Temple (p. 44).

4. She also took all the gifts/cash given by the invitees/guests (p. 46).

5. She made complaints on trivial matters. She kicked the respondent with her leg and told that her mother is a liar (p. 51).

6. She poisoned the ears of her son (p. 52).

7. She gave two used lady''s suits of her daughter to the complainant (p. 57).

8. She gave perpetual sermons to the complainant (p. 58).

9. She told her son Vikas Sharma over phone that kids do not like anything prepared by the complainant (p. 59).

10. She humiliated and harassed by repeatedly saying that her son would be divorced for the second time whereas the complainant would be divorced for the first time.

37. Ex facie no case has been made out under Section 498A of the IPC so far as the appellants are concerned.

The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498A of the IPC. Allegations that appellant No. 2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A . Similarly her allegations that the appellant No. 2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has given perpetual sermons to the complainant could not be said to be offences punishable under Section 498A . Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC."

7A. In the light of the aforesaid allegations, the Supreme Court came to the view that the necessary ingredients required in terms of explanations (a) or (b) of Section 498A of the IPC were not disclosed in the petition of complaint, while there were sufficient ingredients constituting the offences under Section 406 of the IPC as against the appellant No. 2/mother-in-law alone. So the proceedings in the complaint case in respect of Section 498A of the IPC were quashed against both the appellants, while in respect of Section 406 the same were permitted to continue only as against the appellant No. 2.

8. In Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, it was observed -

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not

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expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

9. It is however to be remarked that the case pending in the Learned Court below is not a private complaint but is sustainable on the basis of police investigation. Charge-sheet in the case has already been submitted and the evidence collected during investigation does support the basic allegation in the original FIR that the complainant was subjected to severe physical and mental torture in her household. The FIR also specifically states that the complainant was subjected to consistent humiliation and threats extending to the level of killing her. It can be observed here that there is little likelihood of any medical evidence being collected if mental torture alone is to be taken into account as one of the ingredients to constitute an offence under Section 498A of the IPC. Furthermore, the statement in the FIR to the effect that there was discord and disturbance in the complainant''s matrimonial household on account of her remaining in employment, cannot be read in isolation from the other allegations regarding misappropriation or illegal withholding of the complainant''s valuables and belongings by the accused persons. The fact that before lodging the FIR the complainant had got the joint locker of the parties to be frozen by the Bank authorities cannot be looked into at this stage. It warrants consideration as and when the appropriate stage is arrived at in the Trial.

10. Suffice it to say, it cannot be held at this stage that the material emerging against the petitioners in the original FIR does not disclose any cognizable offence or makes out no case at all against the petitioners. The highlighted observations of the Supreme Court in Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another,   also inevitably lead to this conclusion at this stage.

11. For the aforesaid reasons this Court finds no impropriety or illegality in the impugned order passed by the Learned Trial Court. The revisional application is therefore, dismissed. Considering that the case is very old by now, the learned Trial Court is requested to proceed with the Trial as expeditiously as possible and endeavour to complete the same preferably within one year from the date of framing of charge.

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