

(2010) 09 OHC CK 0054

In the Orissa High Court

Case No : Criminal Appeal No. 1745 of 2010 (Arising out of Special Leave
Petition (Criminal) No. 4758 of 2009)

Sunita Jha

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2011) 1 OLR 328

Hon'ble Judges : Altamas Kabir, J;A.K. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Altamas Kabir, J.—Leave granted. This Appeal is directed against the judgment and order dated 29th April, 2009, passed by a learned Single Judge of the Jharkhand High Court in Criminal Revision No. 410 of 2007 dismissing the same and affirming the order of the Trial Court rejecting the prayer of the Appellant for being discharged from the case.

2. One Asha Rani Pal, the Respondent No. 2 herein, filed a complaint case against her husband, Mukund Chandra Pandit, and the Appellant herein, being Complaint Case No. 404 of 2005, before the Sub-Divisional Judicial Magistrate, Dumka, Jharkhand, u/s 498A IPC. The learned Magistrate by his order dated 6th February, 2006, took cognizance against the Appellant and other accused and issued process for the accused to appear before him on 5th April, 2006.

3. Pursuant to the said order, the Appellant appeared before the learned Magistrate on 10th July, 2006, when the prosecution examined two witnesses, namely, PW.1 Kanhai Pal, father of the Respondent No. 2 and PW.2 Mukti Pal. No further evidence was led by the complainant/Respondent No. 2 and on 13th November, 2006, the learned Magistrate closed the pre-charge evidence and posted the case for arguments on framing of charge.

4. On 9th March, 2007, the Appellant filed an application for discharge, inter alia, on the ground that the complainant had not been examined as a witness in the case. During the arguments on the said application, it was contended that the Appellant could not be made an accused u/s 498A IPC since she was not a relative of Mukund Chandra Pandit and that the allegations made against her did not make out a case of cruelty under the aforesaid Section. However, by his order dated 9th March, 2007, the learned Magistrate rejected the Appellant's application for discharge on the ground that there was prima facie evidence for framing of charge against the accused, including the Appellant, u/s 498A IPC.

5. Aggrieved by the said order, the Appellant moved the Jharkhand High Court at Ranchi by way of Criminal Revision No. 410 of 2007. As indicated hereinabove, a learned Single Judge of the High Court by his order dated 29th April, 2009, dismissed the Revision Application on the ground that since the Appellant was living with the accused husband of the complainant, she must be deemed to have become a family member of Mukund Chandra Pandit for the purpose of Section 498A IPC.

6. The case of the Appellant before us is that the High Court erred in law in holding that the Appellant became a member of the family of Mukund Chandra Pandit merely because she was living with him in his house allegedly as his wife. Mr. Gaurav Agrawal, Advocate, appearing for the Appellant, contended that Section 498A IPC was very clear as to who could be charged under the said Section.

7. For the sake of convenience, the said Section is reproduced hereinbelow:

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.

8. It will be seen from the aforesaid provisions that it is either the husband or the relative of a husband of a woman who subjects her to cruelty, who could be charged under the said Section. Such provision could not apply to a person who was not a relation of the husband when the alleged offence is said to have been committed.

9. It was contended that the Appellant was in no way related to the husband and was not his wife as held by the High Court so as to bring her within the ambit of Section 498A IPC and the charge framed against her was, accordingly, invalid and liable to be quashed. Reliance was placed by Mr. Agrawal on the decision of this Court in *U. Suvetha Vs. State by Insp. of Police and Another*, wherein the aforesaid question was directly in issue. This Court took up for consideration the question as to the persons who could be charged u/s 498A IPC having particular regard to the phrase "relative of the husband" occurring in the said Section. This Court categorically held that neither a girlfriend nor a concubine is a relative of the husband within the meaning of Section 498A IPC, since they were not connected by blood or marriage to the husband.

10. The other question which fell for determination was if a husband was living with another woman besides his wife, whether the same would amount to "cruelty" within the meaning of Section 498A. It was held that if such other woman was not connected to the husband by blood or marriage, the same would not attract the provisions of Section 498A I.P.C., although it could be an act of cruelty for the purpose of judicial separation or dissolution of marriage under the marriage laws, but could not be stretched to amount to "cruelty" u/s 498A IPC.

11. While construing the provisions of Section 498A IPC in the given circumstances, this Court observed that Section 498A being a penal provision deserved strict construction and by no stretch of imagination would a girlfriend or even a concubine be a "relative", which status could be conferred either by blood connection or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

12. Mr. Agrawal urged that the High Court had misconstrued the provisions of Section 498A vis-a-vis the Appellant in relation to the said Section and the impugned order of the High Court was, therefore, liable to be set aside along with the order of the learned Sub-Divisional Judicial Magistrate rejecting the Appellant's prayer for discharge from the complaint case filed by Asha Rani Pal.

13. An attempt was made on behalf of the complainant, Asha Rani Pal, to justify the order passed by the learned Magistrate as also the High Court on the ground that the Appellant must be deemed to have acquired the status of wife of Mukund Chandra Pandit by her conduct and the fact that they had been living together as husband and wife.

14. We have considered the submissions made on behalf of the Appellant and the complainant wife. It may be indicated that the husband Mukund Chandra Pandit has not been made a party to these proceedings. However, having regard to the view which we are taking, his presence is not necessary for disposing of the present appeal.

15. Section 498A IPC, as extracted hereinabove, is clear and unambiguous that only the husband or his relative could be proceeded against under the said Section for subjecting the wife to "cruelty", which has been specially defined in

the said Section in the explanation thereto. The question as to who would be a relative of the husband for the purpose of Section 498A has been considered in detail in U. Suvetha's case (supra). We are entirely in agreement with the views expressed in the said case and we agree with the submissions made on behalf of the Appellant that the learned Judge of the High Court committed an error in bestowing upon the Appellant the status of wife and, therefore, a member of Mukund Chandra Pandit's family. The doctrine of acknowledgement would not be available in the facts of this case. No doubt, there is direct allegation against the Appellant of cruelty against the Respondent No. 2, Asha Rani Pal, but as indicated in U. Suvetha's case (supra), the same would enable the Respondent No. 2 to proceed against her husband u/s 498A I.P.C. and also against the Appellant under the different provisions of the Hindu Marriage Act, 1955, but not u/s 498A I.P.C.

16. The Appeal, therefore, succeeds and is allowed. The judgment of the learned Single Judge of the Jharkhand High Court impugned in this Appeal is set aside and the cognizance taken against the Appellant on 6th February, 2006, by the learned Sub-Divisional Judicial Magistrate, Dumka, u/s 498A IPC, is hereby quashed.