



2023/KER/62077

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945

CRL.REV.PET NO. 1 OF 2007

AGAINST THE JUDGMENT DATED 21.07.2006 IN CRA 288/2005 OF

ADDITIONAL SESSIONS COURT-I,MAVELIKKARA

AGAINST THE JUDGMENT DATED 18.03.2005 IN CC 548/2001 OF JUDICIAL

MAGISTRATE OF FIRST CLASS, KAYAMKULAM

REVISION PETITIONER/APPELLANT/1ST ACCUSED:

NIYAS,

BY ADV SRI.B.KRISHNA MANI

RESPONDENT/RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.N.PRABHAKARAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 03.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****ORDER**

It is a case wherein the accused (the husband and the sister-in-law) were charge sheeted by the police for the offence punishable under Section 498 A IPC. The allegation is that at the residence of the defacto complainant PW1/the wife, the husband raised a demand for more dowry and assaulted her. It is not mentioned or spoken to by PW1 or any of the witnesses examined from the side of prosecution the nature of the assault on the defacto complainant. It is not specified the nature of assault alleged to have been done by the accused towards the defacto complainant. The learned prosecutor tried to advance a case that it may be an assault by hitting on her body. But no such case was advanced. It is not explained the nature of assault on her by the accused. Admittedly, there is no evidence to show any kind of assault or any injury received by her on such assault. No medical evidence was produced. In fact, she did not



have any case that she had gone to any hospital in connection with the alleged incident or received any injury on the alleged assault. Only the near relatives of the wife/PW1 and her mother were examined besides the official witnesses. In order to bring up a case punishable under Section 498A, it must be satisfied that the husband or his relatives subjected the woman, the wife, with cruelty. For the purpose of cruelty, an explanation was attached to Section 498A 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 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."

(emphasis supplied)

2. The cruelty within the meaning of Section



498A IPC consists of two clauses (a) and (b) within the Explanation attached to that Section. The clause (a) explains "cruelty" within its sphere any wilful conduct from the part of husband or the relative of husband as is likely to drive the woman to commit suicide or to cause any grave injury or danger to life, limb or health, whether physical or mental. It is by way of clause (b), even a "harassment" to the woman was brought under the purview of "cruelty" for the purpose of Section 498-A IPC, if 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 on account of failure to meet such demand, which would by itself show that the "harassment" must be of such a nature to exert compulsion with a view to coerce her or her relatives to meet the unlawful demand for property or valuable security. Necessarily, in order to bring home the application of clause (b) of Explanation attached to Section 498 A IPC, atleast the following ingredients should be established; (i) there should be harassment



on account of an unlawful demand for any property or valuable security by the husband or his relatives (ii) it should be towards the wife or her relatives (iii) the wife or her relatives were subjected to harassment (cruelty) with a view to coerce her or her relatives to meet such unlawful demand or the harassment is on account of failure to meet such demand. Mere sporadic incidents of ill-treatment or mundane differences or trivial disputes that may arise between the spouses or their relatives in the usual course of life, though it may have its own impact, may not be sufficient to bring out the offence under Section 498 A IPC. The expression "harassment" is not defined in the provision or anywhere in the Code. It should be understood in relation to the mischief sought to be suppressed under the said provision. Necessarily, the wording used "coercing" in clause (b) assumes importance. The word 'coercion' is also not defined anywhere in the provision or in the Code, but can find a place under Section 15 of the Contract Act, which stands for



"committing or threatening to commit, any act forbidden by the Code or an unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person "to enter into an agreement"". The expression 'to enter into an agreement' as incorporated in the definition clause under Section 15 of the Contract Act, be understood substituted by the expression 'to meet any unlawful demand or on account of failure to meet such demand', for the purpose of clause (b) of Explanation to Section 498 A IPC in order to have an understanding of the word "coercing" used in clause (b) of the Explanation and it will give rise to an idea about what actually constitutes the expression "harassment" to bring home the vital ingredient of the said offence "cruelty" and it shall not be misunderstood with the dictionary meaning or any act of "cruelty" without the element, which would constitute clauses (a) or (b) of Explanation attached to, for the purpose of criminal liability under that provision viz., Section 498 A



IPC. The ingredient, which would constitute "coercion" must be applied so as to have an understanding of what actually amounts to 'harassment' within the meaning of clause (b) of the Explanation. The corollary is that in order to bring home the vital ingredient "cruelty" under Clause (b) of Explanation, the 'harassment' must be of the nature sufficient to coerce either the wife or her relatives to meet any unlawful demand for property or valuable security or on account of failure to meet that demand. A mere skirmish in the ordinary life between the spouses or intermittent quarrel or even a frequent quarrel, unless constitutes the ingredient of 'harassment' for meeting an unlawful demand for property or valuable security or on account of failure to meet such unlawful demand, would not constitute or attract the criminal liability that can be fastened for the offence under Section 498 A IPC. Like wise, a demand for dowry or any property or valuable security without the ingredient of "cruelty" as explained under clause (a) or (b) will not attract



the said offence, but a combined effect of both these would bring home the liability under Section 498 A IPC.

3. The requirement to be established to bring home the guilt of accused under Section 498 A has been laid down by the Apex Court in a catena of decisions such as **Satish Kumar Batra and Others v. State of Haryana (AIR 2009 SC 2180)**, **Rajendran and Another v. State Assistant Commissioner of Police (Law and Order) (AIR 2004 SC 855)**, **Onkar Nath Mishra and Others v. State (NCT of Delhi and Another) (AIR 2008 SC (Supp) 204)**, **M. Srinivasulu v. State of A.P. (AIR 2007 SC 3146)**, wherein it is settled that consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498 A IPC.

4. The Apex Court on one occasion has cautioned against the practice of implicating the husband and



his near relatives, which would lead to immense sufferings either to the husband or his relatives and sometimes it may go to the extent of breaking the very relation of married couple. In **Preeti Gupta v. State of Jharkhand [(2010) 7 SCC 667 = AIR 2010 SC 3363]**, the Apex Court has cautioned against the tendency of over implication reflected in large number of cases and found that it ultimately creates enormous social unrest affecting peace, harmony and happiness of the society after observing that even ultimate acquittal may not be able to wipe out the deep scars of suffering of ignominy and it is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in existing law.

5. The practice of registering FIR alleging offence under Section 498 A IPC and setting the criminal law in motion on the basis of trivial disputes or differences between the spouses or the relatives may not reflect the legislative intent or the mischief to be suppressed under that provision,



hence, the authorities should be more vigilant and cautious while setting the criminal law in motion and shall not unnecessarily drag such mundane disputes or differences between the spouses or their relatives in a criminal prosecution for the offence under Section 498 A IPC.

6. The instant case would not fall under the sweep of criminal liability that can be extended for the said offence. The allegation of an earlier incident of manhandling cannot be accepted since there is no acceptable evidence to show the earlier attack. Further, no document worth the name was produced to show any earlier incident or any assault on the victim, PW1. There is failure on the part of both the trial court and the first appellate court to apply the law in force in its correct perspective. Hence, the finding of guilt of accused No.1 of the offence under Section 498 A IPC and the conviction thereunder and the sentence awarded will stand set aside. The accused No.1/the appellant is not found guilty of the offence under Section 498A IPC and



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hence acquitted and set at liberty. Bail bond, if any executed, will stand cancelled.

The Crl.Revision Petition is allowed accordingly.

Sd/-

P. SOMARAJAN
JUDGE

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