

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1048 OF 2018
(ARISING OUT OF SLP(CRL.) NO.4122 OF 2016)

MOHAMMAD MIYAN & ORS. . . . APPELLANT(S)
VERSUS
THE STATE OF UTTAR PRADESH & ANR. . . . RESPONDENTS

O R D E R

Leave granted.

The incident for which the appellants are being prosecuted is said to be as follows :

On 15.2.2012, at a meeting between the complainant-wife viz., Tausif Akhtar and her husband Mohammad Miyan along with his mother Saleeman Nisha and many other relatives who are about 9 in number, a demand for dowry was made. The wife is said to have refused to pay since the dowry has already been paid. Therefore, the husband is said to have got enraged and the mother-in-law Saleeman Nisha and sister-in-law of the complainant are said to have caught her hair and the husband is said to have given blow with fist because of which one tooth of the complainant-wife is said to have broken.

The complainant filed an FIR against the appellants alleging offences under sections 498A, 323, 325, 504 and 506 of the Indian Penal Code and sections 3/4 of the

Dowry Prohibition Act, 1961.

The husband and other co-accused approached the High Court by filing petition under section 482 of the Code of Criminal Procedure (for short, the 'Cr.P.C.') for quashing the entire criminal proceedings. The High Court dismissed the said petition with liberty to the appellants-accused to file application for discharge before the trial court. The trial court dismissed the application for discharge. Being aggrieved, the appellants-accused filed revision petition before the High Court which was dismissed. Hence, this appeal by special leave.

Mr. R. K. Das, learned Senior Counsel appearing for the appellants-accused, submits that the prosecution under section 498A of IPC was clearly not tenable in view of the case of the complainant herself that there had been a divorce almost four years before filing of the FIR.

We find much substance in the submission made by Mr. Das, learned Senior Counsel appearing for the appellants-accused. Even in the FIR dated 18.8.2015, the complainant-wife has stated that her divorce had taken place about four years back. It is not possible to accept the contention made by learned counsel appearing on behalf of complainant-wife that she made the statement in ignorance of Sharia law. She is a Headmistress and must be credited with due knowledge of her meritorious status.

In view of her own averment that she was divorced four years ago, we are of the view that the prosecution is not sustainable under section 498A of the IPC and Sections 3/4 of the Dowry Prohibition Act, 1961.

Section 498A¹ of the IPC opens with the words "*Whoever, being the husband or the relative of the husband of a woman....*" Therefore, where the complainant approaches with a case that there has been a divorce long back i.e. four years ago before filing of the FIR, section 498A of IPC in terms would not be attracted. We accordingly consider it appropriate to quash the prosecution against all the accused persons under section 498A of IPC and Sections 3/4 of the Dowry Prohibition Act, 1961.

Order accordingly.

The prosecution in respect of other offences under sections 323, 325, 504 and 506 of IPC must however be dealt with differently.

True or false the charge is that the accused viz., husband Mohammad Miyan and his mother Saleeman Nisha, bit the complainant, the mother-in-law is said to have caught her by hair and the husband is said to have landed a fist

¹ [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.]

blow. There is vague allegation that the sister-in-law also caught the complainant by hair but it is not possible to ascertain which sister-in-law did so since two sisters-in-law were present at the time of occurrence. It would be impermissible to carry on the prosecution against both of them.

However, we are of the view that the husband and his mother viz., Mohammad Miyan and Saleeman Nisha, must face prosecution under sections 323, 325, 504 and 506 of IPC in accordance with law.

Order accordingly.

The prosecution against the other accused persons under sections 323, 325, 504 and 506 of IPC is also quashed.

Hence, we partly allow this appeal and set aside the impugned order passed by the High Court to the above extent.

.....J
[S. A. BOBDE]

.....J
[L. NAGESWARA RAO]

NEW DELHI;
AUGUST 21, 2018.

ITEM NO.15

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No.4122/2016

(Arising out of impugned final judgment and order dated 04-05-2016 in CRLR No.1319/2013 passed by the High Court Of Judicature At Allahabad)

MOHAMMAD MIYAN & ORS.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(With appln.(s) for exemption from filing O.T.)

Date : 21-08-2018 The matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Dr. R.K. Das, Sr. Adv.
Mr. Vikas K. Singh, Adv.
Mr. T. N. Singh, AOR

For Respondent(s) Mr. Asad Alvi, Adv.
Ms. Saba Asad Ali, Adv.
Mr. Faiz Rizvi, Adv.
Mr. D. Vidyanandan, Adv.
For Mr. Satya Mitra, AOR

Mr. Garvesh Kabra, AOR
Mr. Vivek Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed of.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)