

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(THROUGH VIRTUAL MODE)**

CRMC 560/2018
CrIM No. 1496/2020

Reserved on 15.12.2020
Pronounced on 23.12.2020

Karnail Chand and otherspetitioner(s)

Through :- Mr. Sandeep Bhat, Advocate

V/s

State of J&K and anotherRespondent(s)

Through : Mr. Aseem Sawhney AAG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 Through the medium of instant petition, the petitioners have challenged FIR No. 31/2018 for offence under Section 498-A RPC registered with Police Station, Women Cell, Udhampur.

2 Briefly stated the facts giving rise to filing of this petition are that on 24.07.2018, respondent No.2/complainant presented a complaint before the Police Station, Women Cell, Udhampur alleging therein that about two years ago, she had entered into wedlock with one Kuldeep Kumar and out of the said wedlock, one son was born. It was further alleged in the complaint that her husband and his relatives, who happen to be the petitioners herein, used to harass and subject her to cruelty and that she was beaten up and thrown out of her matrimonial home. It was also alleged that the husband of respondent No.2/complainant is working in the Army, but she is not being paid any

maintenance. The allegations regarding demands of dowry items like Refrigerator, Almirah, Cooler and Car were also leveled against the petitioners and husband of respondent No. 2/complainant. It was also alleged that about two months back, respondent No.2/complainant was thrown out of her matrimonial home and that she is being subjected to cruelty by her husband and the petitioners herein. On the basis of the aforesaid complaint, impugned FIR came to be registered and the investigation of the case was set into motion.

3 The petitioners have challenged the impugned FIR primarily on the ground that the accused Kuldeep Kumar is a married person and there was no scope for him to get married second time during the life time of his first wife, the petitioner No.4 herein. It is contended that since the respondent No.2/complainant is not the legally wedded wife of accused Kuldeep Kumar, as such, offence under Section 498-A RPC is not made out against the petitioners.

4 It is pertinent to mention here that petitioners No.1 and 2 happen to be the parents of accused Kuldeep Kumar and petitioner No.3 happens to be his sister. Petitioner No.4, who claims to be the legally wedded wife of accused Kuldeep Kumar, has not been named as an accused in the subject FIR and she has challenged the subject FIR on behalf of her husband, who is stated to be working with Army at some outstation location.

5 The respondents have resisted the petition by filing a response thereto along with an application for vacation of the interim order passed by this Court whereby investigation of the impugned FIR has been stayed. In their response, it is averred that during the investigation of the case, it has come to fore that respondent No.2/complainant was a divorcee and out of her earlier marriage with one Yash Pal, a male baby was born. It was also found that respondent

No.2/complainant had got remarried to accused Kuldeep Kumar and that she was being subjected to harassment and mental torture on account of demand for dowry by the petitioners. It was also found that on 28.06.2018, there was exchange of hot words between petitioners No.2 and 3 and respondent No.2/complainant, whereafter, she was thrown out of her matrimonial home. Thus, according to the prosecution, offence under Section 498-A RPC stands established against the petitioners.

6 I have heard learned counsel for the parties and perused the record of the case.

7 The primary argument of learned counsel for the petitioner is that accused Kuldeep Kumar, the claimed husband of respondent No.2, was a married person having two sons out of his wedlock with petitioner No.4. The petitioners have placed on record documents in support of this assertion and, in fact, the investigating agency has also found that petitioner No.4 is the legally wedded wife of accused Kuldeep Kumar and that the said marriage was subsisting at the time when the said accused entered into wedlock with respondent No.2. According to the learned counsel, as per Hindu law, a person is prohibited from solemnizing second marriage during the life time of his first wife and in case he does so, the second marriage would be *void abinitio*. It is contended that even if the contention of respondent No.2 that she had entered into wedlock with Kuldeep Kumar is taken to be correct, still then, neither Kuldeep Kumar, nor his relatives can be said to have committed offence under Section 498-A RPC as the accused Kuldeep Kumar is not legally recognized husband of respondent No.2.

8 *Per contra*, learned counsel for the respondents has submitted that even if it is assumed that the accused Kuldeep Kumar was already married at the time when he entered into wedlock with respondent No.2, still then, for the purpose of Section 498-A RPC, his status qua respondent No.2 is that of her husband. Therefore, any harassment or cruelty in connection with demand of dowry meted out to respondent No.2 by accused Kuldeep Kumar or his relatives would constitute an offence under Section 498- A RPC.

9 In order to understand the controversy at hand, it would be appropriate to notice the provision contained in Section 498-A RPC, which reads as under:

“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”.

10 From a perusal of the aforesaid provision, it is clear that, for making out an offence under Section 498-A RPC, it is to be shown that the perpetrator of cruelty upon a woman must be either her husband or relative of her husband.

11 The Supreme Court, in the case of **Reema Aggarwal vs Anupam and others, (2004) 3 SCC 199**, had an occasion to consider the question as to who would be covered by the expression “husband” for attracting Section 498-A IPC which is in *pari materia* with Section 498-A of the J&K State RPC. The Court, while answering this question, observed as under:

“The concept of "dowry" is intermittently linked with a marriage and the provisions of the [Dowry Act](#) apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the

marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which [Sections 498A and 304B-IPC](#) and [Section 113B](#) of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by [Section 498A](#). Legislature has taken care of children born from invalid marriages. [Section 16](#) of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to [Section 494](#) has also

some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce 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. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions".

12 The aforesaid view was reiterated and reaffirmed by the Supreme Court in the case of **A. Subash Babu vs State of A.P and another, (2011) 7 SCC 616**. The Court, while setting aside the order of the High Court whereby proceedings pending before the Magistrate under Section 498-A IPC were quashed on the ground that the marriage, which was subject matter of that case, was *void* as the complainant was not the wife of the accused, observed as under:

“17. In view of firm and clear law laid down on the subject, this Court is of the confirmed view that the High Court was not justified at all in quashing the proceedings initiated against the appellant under Section 498A of the Code on the ground that the respondent no. 2 was not wife within the meaning of Section

498A of the IPC and was not entitled to maintain complaint under the said provision. The question therefore which arises for consideration of the Court is whether the said finding recorded by the High Court can and should be set aside in the present appeal which is filed by the husband. It was argued by the learned Counsel for the appellant that quashing of proceedings with reference to offence punishable under [Section 498A](#) of Indian Penal Code is neither challenged by the State Government nor by the original complainant before this Court and the same having attained finality, the same cannot be disturbed in an appeal filed by the husband appellant in which grievance is made regarding non-grant of relief in full by the High Court.

*18. This Court does not find any substance in the above mentioned argument of the learned Counsel for the appellant. The law declared by this Court in case of *Reema Aggarwal (Supra)* was binding on all Courts including the learned Single Judge of High Court of A.P. who decided the present case in view of salutary provisions of [Article 141](#) of the Constitution. The learned Single Judge of the High Court could not have afforded to ignore the law declared by this Court in *Reema Aggarwal (Supra)* while considering the question whether proceedings initiated by the respondent no.2 for commission of offence punishable under [Section 498-A RPC 498A](#) of IPC should be quashed or not. The High Court has completely misdirected itself in quashing the proceedings for the offence punishable under [Section 498A](#) of IPC. There is no manner of doubt that the finding recorded by the High Court that the respondent no. 2 is not the wife within the meaning of [Section 498A](#) of the Indian Penal Code runs contrary to law declared by this Court in case of *Reema Aggarwal (Supra)*. There may be several reasons due to which the State might not have challenged that part of the Judgment of the learned Single Judge quashing the complaint filed by the respondent no. 2 under [Section 498A](#) of the Indian Penal Code. So also because of several reasons such as want of funds, distance, non-availability of legal advice,*

etc. the original complainant might not have approached this Court to challenge that part of the judgment of the learned Single Judge which is quite contrary to the law declared by this Court. However, this Court while entertaining an appeal by grant of special leave has power to mould relief in favour of the respondents notwithstanding the fact that no appeal is filed by any of the respondents challenging that part of the order which is against them. To notice an obvious error of law committed by the High Court and thereafter not to do anything in the matter would be travesty of justice. This Court while disposing of an appeal arising out of grant of special leave can make any order which justice demands and one who has obtained illegal order would not be justified in contending before this Court that in absence of any appeal against illegal order passed by the High Court the relief should not be appropriately moulded by the Court or that the finding recorded should not be upset by this Court”.

13 From what has been discussed and held by the Apex Court in the aforesaid judgments, it can be safely stated that when a person enters into a marital arrangement with a woman, he is covered by the definition of ‘husband’ as contained in Section 498-A RPC irrespective of the legitimacy of the marriage.

14 Learned counsel for the petitioner has placed reliance upon the judgments in the cases of **Baby Devi vs Arun Kumar Aman alias Rameshwar Rahi,1999 CrLJ 4510, Shivcharan Lal Verma and another vs. State of M.P, 2002 (2) Crimes 177 (SC) and Babita Sumanprakash Soni vs. State of Gujrat and another, (CR.MA No. 7344/2014, decided on 04.12.2014)** to canvas the point that it is only a legally wedded wife and her relatives, who can be prosecuted for offence under Section 498-A RPC.

15 In Baby Devi's case (supra), the issue before the Patna High Court was pertaining to maintenance of petitioner therein, who was found not entitled to the same on account of the fact that her marriage was not a valid marriage being second marriage. In the said case, the issue was not discussed by the High Court in the context of provisions contained in Section 498-A IPC. The said judgment is, therefore, not applicable to the instant case.

16 In Babita Sumanprakash Soni's case (supra), the Supreme Court has held that, neither a girl friend nor a concubine would come within the definition of relative of the husband since they were not connected by blood or marriage to the husband. In the instant case, we are dealing with the situation of a man qua a woman with whom he has entered into second marriage during the subsistence of his first marriage. We are not concerned with the issue as to whether a girlfriend or a concubine would come within the definition of relative of the husband. The ratio laid down in the said case is, therefore, not applicable to the instant case.

17 So far as the judgment of Supreme Court in Shivcharan Lal's case (supra) is concerned, in the said judgment, it has been concluded that a person cannot be convicted under Section 498-A IPC if his marriage with a woman is *void*. However, the judgment of the Supreme Court in Reema Aggarwal's case (supra) as reiterated in A. Subash Babu's case (supra) being later in point of time would, hold the field and the ratio laid down in Shivcharan Lal's case (supra) would be treated as impliedly overruled.

18 From the aforesaid discussion, this Court has no hesitation in holding that even if respondent No.2 is not the legally wedded wife of accused Kuldeep Kumar, still then, petitioner Nos. 1 to 3, who happen to be the relatives of the

accused Kuldeep Kumar as also accused Kuldeep Kumar can be prosecuted for an offence under Section 498-A RPC on the basis of allegations made by respondent No.2 in the subject FIR. The allegations made in the subject FIR *prima facie* constitute an offence under Section 498-A RPC against the accused Kuldeep Kumar and petitioner Nos. 1 to 3, as such, the investigation, which is still at its infancy, cannot be throttled by quashing the subject FIR.

19 For the foregoing reasons, I do not find any good ground to interfere in the investigation of the impugned FIR. The petition is found to be without any merit. The same along with connected application stands dismissed.

Interim order of stay of proceedings of the impugned FIR shall stand vacated.

Jammu
23.12.2020
Sanjeev P/S



(Sanjay Dhar)
Judge

Whether order is speaking: **Yes**
Whether order is reportable: **Yes**