

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 01st February, 2019
Judgment delivered on: 28th May, 2019

+ **CRL.REV.P. 129/2018 & CrI.M.A.2863/2018**

KAUSHAL KISHORE

..... Petitioner

versus

STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Harish Salve, Senior Advocate with Mr. S.A. Hashmi, Mr. Salman Hashmi, Mr. Sheezan Hashmi and Mr. Aditya P. Khanna, Advocates.

For the Respondent : Mr. Hirein Sharma, Additional Public Prosecutor with Sub Inspector Sachin Kumar, Police Station South Campus.

CORAM:-

HON'BLE MR. JUSTICESANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order on charge dated 27.10.2017 whereby charge has been framed against the petitioner under Section 498A Indian Penal Code (IPC for short).

2. Mr. Salve, learned Senior Counsel appearing for the petitioner contends that Charge Sheet was filed both under Section 306 and Section 498A IPC, however, the Trial Court found insufficient material to proceed under Section 306 IPC. He submits that cruelty under Section 498A IPC is to be of such a nature which is likely to drive a woman to commit suicide or to cause grave injury etc. and as the Trial Court found insufficient material

to proceed under section 306 IPC, on the same analogy, there was insufficient material to even frame a charge under Section 498A of IPC.

3. Deceased married the petitioner on 27.09.2009. On 28.09.2010, the deceased committed suicide. FIR was registered on the complaint of the mother of the deceased, which complaint was lodged on 29.09.2010.

4. The allegations in the FIR are that the married life of her daughter with the petitioner was not good from day one. It is alleged that on the first day itself, petitioner had informed the deceased that his brother had four children and she had to take care of them. It is contended that the deceased initially did not inform her family about any problem but after six months, she started informing them that her husband had been mentally torturing her.

5. It is alleged that once at 1 AM in the night he had turned her out of the house and after a lot of requests, he permitted her to come back. It is alleged that on every occasion petitioner used to fight with her with regard to the children of his brother and used to blame her for any problem that they faced.

6. In her supplementary statement, recorded on 10.11.2010, the mother of the deceased stated that she was told by her daughter that her husband i.e. the petitioner did not want any child as he had stated that his brother had four children and she was to take care of them. It is contended that he never used to give her any money for expenditure. It is alleged that twice she became pregnant but both times she got the child aborted. Further, it is alleged that they had travelled to London where despite protest by the deceased, petitioner made her stay at her relative's house.

7. It is alleged that the deceased informed the mother that the petitioner wanted that all personal expenses of the deceased should be incurred by her brother and her brother should give money for purchasing a house in Gurgaon. It is alleged that she was being continuously mentally and physically tortured and beaten and was being pressurised to talk to her brother about getting money for purchasing a plot.

8. Statements of the brothers of the deceased Neeraj Mediratta and Anuj Mediratta were also recorded. They also stated that their sister – the deceased was being harassed by the petitioner and one day he kept on shouting and fighting with her and at about 1 AM in the night he dragged her out of the house and asked her to go and get money from her mother and brothers and when she was asked about the reason for such behaviour, she stated that it was on account of the children of the brother of the petitioner. It is alleged that he used to continuously abuse her and had even made her apologize to him in writing several times and was looking for excuses to scold her and fight with her. It is alleged that when she had conceived, the petitioner physically and mentally started harassing her and would not get her medical check-up done, on account of which, she had miscarriage. They have contended that she committed suicide on account of the ill behaviour of the petitioner.

9. The deceased committed suicide on 28.09.2010, the very next day of her first marriage anniversary. As per the prosecution, a notebook was recovered from the spot and in the notebook, there was a suicide note allegedly written by the deceased. The suicide note has been verified by the Forensic Science Laboratory written in the handwriting of the deceased. In the suicide note, which is in Hindi, she has written as under:-

“Dear All,

I am tired of this life. Everyone loves me. My two brothers and mother and my father in law and husband. Kaushalji loves me a lot and takes care of my happiness.

But I do not want to live now, I am taking this step only for this reason.

I am responsible for my death.

All of you forgive me.

Yours

Swati

28/9/2010”

10. By the impugned order, Trial Court has framed charges under Section 498A IPC and has discharged the accused for the offence under Section 306 IPC.

11. The Trial Court was of the view that the suicide note exonerated the petitioner and stated that the deceased was taking the step voluntarily. The Trial Court was of the view that since the suicide note exonerated the petitioner, there was insufficient material against him insofar as the offence under Section 306 IPC was concerned.

12. However, the Trial Court found that there were specific allegations made in the statements of Smt. Kamlesh (mother of the deceased) and Sh. Neeraj Mediratta and Sh. Anuj Mediratta (brothers of the deceased) that the petitioner had maltreated the deceased and committed physical and mental cruelty.

13. Sections 306 IPC reads as under:-

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

14. Sections 498A IPC 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.

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.”

15. *In Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177* the Supreme Court has held as under

*“17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Indian Penal Code are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence.******

18. ****** Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. ******

16. In *Girdhar Shankar Tawade* (supra), the Supreme Court has clearly laid down that charges under Section 306 and 498A IPC are independent of each other and acquittal of one does not lead to acquittal of the other. Acquittal of a charge under Section 306 does not by itself become a ground for acquittal under Section 498A IPC but some cogent evidence is required to bring home the charge of Section 498A as well, without which the charge cannot be said to be maintained.

17. In *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 the Supreme Court held as under:

*“22. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. *****”*

18. In *Ramesh Kumar vs. State of Chhattisgarh*, the Supreme Court has further held that Sections 498A and Section 306 IPC are independent and constitute different offences. Depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an

offence under Section 498A and may also if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide.

19. In the present case, Trial Court found insufficient material to charge the petitioner for an offence under Section 306 IPC but after examination of the material on record was of the view that there is sufficient material to frame a charge under section 498A IPC.

20. As noticed above, an acquittal or discharge under Section 306 IPC would not *ipso facto* amount to an acquittal or discharge under Section 498A IPC. Ingredients of both the Sections are different. Though, there may be an overlap with regard to cruelty being meted out to the deceased in both the Sections, however, the degree of cruelty to constitute abetment under Section 306 IPC would be of higher than the degree of harassment and cruelty to constitute an offence under Section 498A IPC. It cannot be held that because petitioner has been discharged of an offence under Section 306 IPC, it would automatically lead to a discharge of the offence under Section 498A IPC.

21. In the present case, there is sufficient material on record in the form of the statements of the mother as well as the brothers of the deceased, alleging both physical and mental harassment by the petitioner of the deceased. There are specific allegations that petitioner had maltreated the deceased and committed physical and mental cruelty on her and even made demands for money to purchase a plot. In my view there is sufficient material on record to give rise to grave suspicion against the petitioner for framing a charge under Section 498A IPC.

22. Further submissions made on behalf of the petitioner, rendering explanations for the allegations levelled by the family of the deceased and attempting to establish that the allegations are false and controverted by other facts, are pleas to be raised in defence by the petitioner which would be appropriately considered by the Trial Court.

23. At the stage of framing of charge, the Court is not to look into the probable explanation or defence of the accused but is to examine the material collected by the prosecution at the time of investigation. Explanations with regard to the allegations or the statements of neighbours with regard to their observation of the behaviour of the petitioner with the deceased, relied on by learned counsel for the petitioner, is material which would be proved by the petitioner by leading his defence evidence.

24. On perusal of the record, I am satisfied that there is no infirmity in the view taken by the Trial Court in framing a charge against the petitioner for an offence under Section 498A IPC.

25. In view of the above, I find no infirmity in the impugned order. The petition is, accordingly, dismissed.

26. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

MAY 28, 2019

HJ/St