CASE NO.:
Writ Petition (civil) 141 of 2005

PETITIONER:
Sushil Kumar Sharma

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 19/07/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
JUDGMENT

Arijit Pasayat, J.

By this petition purported to have been filed under Article 32 of the Constitution of India, 1950 (in short 'the Constitution') prayer is to declare Section 498A of Indian Penal Code, 1860 (in short 'the IPC') to be unconstitutional and ultra vires in the alternative to formulate guidelines so that innocent persons are victimized by unscrupulous persons making false accusations.

Further prayer is made that whenever, any court comes to the conclusion that the allegations made regarding commission of offence under Section 498 IPC are unfounded, stringent action should be taken against person making the allegations. This according to the petitioner, would discourage persons from coming to courts with unclean hands and ulterior motives. Several instances have been highlighted to show as to how commission of offence punishable under Section 498A IPC has been made with oblige motive and with a view to harass the husband, in-laws and relatives.

According to the petitioner there is no prosecution in these cases but persecution. Reliance was also placed on a decision rendered by a learned Single Judge of the Delhi High Court wherein concern was shown about the increase in number of false and frivolous allegations made. It was pointed out that accusers are more at fault than the accused. Persons try to take undue advantage of the sympathies exhibited by the courts in matters relating to alleged dowry torture.

Section 498A appears in Chapter XXA of IPC.

Substantive Sections 498A IPC and presumptive Section 113-B of the Indian Evidence Act. 1872 (in short 'Evidence Act') have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983.

Section 498A IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

Section 498 reads as follows:

"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."

Section 113-B reads as follows:-

"113-B: Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation-For the purpose of this section 'dowry death' shall have the same meaning as in Section have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

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 is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the explanation for the purpose of Section 498A. It is to be noted that Sections 304-B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of 'cruelty'. In Section 304-B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence.

The object for which Section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examines the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in laws and relatives. The avowed object is to combat the menance of dowry death and cruelty.

One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two Section i.e. Section 306 and Section 498A is that of intention. Under the latter. cruelty committed by the husband or his relations drag the women concerned to commit suicide, while under the former provision suicide is abetted and intended.

It is well settled that mere possibility of abuse of a provisions of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administrative and application of a particular law would be done "not with an evil eye and unequal hand" (see A Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income-Tax officer and Anr., AIR (1956) SC 246.

In Budhan Choudhry and Ors. v. State of Bihar, AIR (1955) SC 191 a contention was raised that a provision of law may not be discriminatory but

it may land itself to abuse bringing about discrimination between the persons similarly situated. This court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

From the decided cases in India as well as in United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra-vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action; order or decision and grant appropriate relief of the person aggrieved.

In Mafatlal Industries Ltd. and Ors. v. Union of India and Ors., [1997] 5 SCC 536, a Bench of 9 Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty, [1962] 3 SCR 786 this Court observed:

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity." It was said in State of Rajasthan v. Union of India, [1977] 3 SCC 592 "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief." (Also see: Commissioner, H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Meth, [1954] 1005.

As observed in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, [2004] 6 SCC 672, Unique Butle Tube Industries (P) Ltd. v. U.P. Financial Corporation and Ors., [2003] 2 SCC 455 and Padma Sundara Rago (dead) and Ors. v. State, [2002] 3 SCC 533. while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of Law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

The judgment of the Delhi High Court on which reliance was made was rendered in the case of Savitri Devi v. Ramesh Chand and Ors. In that case while holding that the allegations regarding commission of offence punishable under Section 498A IPC were not made out. Certain observations in general terms were made about the need for legislative changes. The complaint had moved this Court against the judgment on merits in SLP (Crl).....of 2003 entitled Savitri Devi v. Ramesh Chand and Ors. By order dated 28.11.2003 this Court observed as follows:

"Heard learned counsel for the petitioner.

Delay condoned.

> We do not see any merit in the challenge made to the order of the High Court in Criminal Revision No. 462 of 2002 on the facts of the case. the special leave petition is, therefore, dismissed.
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> At the same time, we express our disapproval of some of the generalized views expressed in paragraphs 23 to 32 of the judgment of the High Court by the learned Single Judge. The learned Judge ought to have seen that such observations, though may be appropriate for seminars or workshops, should have been avoided being incorporated as part of a court judgment. Some of the views also touch upon Legislative measures and wisdom of legislative policy in substance, which according to the learned Judge need to be taken into account. There was no scope for considering all such

matters in the case which was before the learned Judge. It is therefore, appropriate that such generalized observations or views should meticulously avoided by Courts in the judgments."

Above being the position we find no substance in the plea that Section 498A has no legal or constitutional foundation.

The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with obligue motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

Prayer has been made to direct investigation by the Central Bureau of Investigation (in short the 'CBI') in certain matters where the petitioner is arrayed as an accused. We do not find any substance in this plea. If the petitioner wants to prove his innocence, he can do so in the trial, if held.

The Writ Petition is accordingly disposed of.