

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF JULY, 2023**

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 1372 OF 2019

BETWEEN:

KANTHARAJU

...PETITIONER

(BY SRI. CHETAN DESAI, ADVOCATE)

AND:

STATE OF KARNATAKA
BY KYATHASANDRA POLICE STATION
REPRESENTED BY
PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE – 560 001.

...RESPONDENT

(BY SRI. RAHUL RAI K, HCGP)

THIS CRL.RP IS FILED U/S. 397 R/W SECTION 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 18.01.2019 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC-1, TUMAKUR IN C.C.NO.3980/2011, INsofar AS CONVICTING AND SENTENCING THE PETITIONER FOR THE OFFENCES PUNISHABLE UNDER SECTION 498-A IPC, AND CONFIRMED BY THE ORDER DATED 04.10.2019 PASSED BY THE VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKUR, AT TUMAKUR IN CRL.A.NO.02/2019 AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 27.06.2023, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order of sentence dated 18.01.2019 in C.C.No.3980/2011 on the file of the Court of the Principal Civil Judge and J.M.F.C-I at Tumakuru and its confirmation judgment and order dated 04.10.2019 in CrI.A.No.2/2019 on the file of the Court of the VI Additional District and Sessions Judge at Tumakuru seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused is convicted for the offences punishable under Sections 498-A of Indian Penal Code (for short 'IPC').

2. The petitioner is the accused before the Trial Court and appellant before the Appellate Court.

Brief facts of the case are as under:

3. It is the case of the prosecution that, the complainant married the petitioner as second wife and it is stated in the said complaint that, initially upto five years, both the petitioner and the complainant were living cordially. In the said marriage, the couple had a male child. After she gave

birth to the child, she had some health issues. Later on, she was affected due to paralysis, which led her to lose control over her legs, she became incapacitated. The petitioner, due to the said health issues of the complainant, started harassing her and it is stated that, she was being subjected to cruelty and mental torture. It is further stated that, she was being abused in a filthy language and she was thrown out of the matrimonial home. After she was thrown out of the matrimonial home, she started living by running a petty shop for her livelihood. Then also, the petitioner started quarreling and threatened her that he would pour kerosene and lit fire to the shop along with her, if she continued to run petty shop in that area. Unable to tolerate the cruelty and harassment of the petitioner, the complainant has lodged a complaint before the jurisdictional police. The police have registered a case and submitted the charge sheet.

4. To prove the case of the prosecution, the prosecution examined, in all, 7 witnesses namely PWs.1 to 7 and got marked Exhibits P1 to P4. The Trial Court after appreciating the oral and documentary evidence on record, convicted the petitioner for the offence punishable under Section 498-A of IPC. Being aggrieved by the same, the

petitioner preferred an appeal before the Appellate Court, the Appellate Court confirmed the judgment of conviction rendered by the Trial Court. Being aggrieved by the same, the petitioner has preferred this revision petition seeking to set aside the concurrent findings.

5. It is the submission of learned counsel for the petitioner that, the Trial Court and the Appellate Court committed grave error in not appreciating the evidence and law properly, hence, the same is required to be set aside. The main contention of the learned counsel for the petitioner is that, the complainant being the second wife of the petitioner, the offence under Section 498-A of IPC cannot be attracted and both the Courts below have committed error in not considering that aspect. In support of his contention, learned counsel for the petitioner has made available and relied on the judgments of the Hon'ble Supreme Court in *Shivcharan Lal Verma & Another v. State of Madhya Pradesh*¹ and *P.Sivakumar & Others v. State, Rep. by the Deputy Superintendent of Police etc.*,² Making such submission, learned counsel for the petitioner

¹ (2007) 15 SCC 369

² CrI.A.No.1408-1409/2012 disposed of on 09.02.2023

prays to allow the revision petition and set aside the concurrent findings of conviction.

6. *Per contra*, learned High Court Government Pleader (for short "HCGP") justified the concurrent findings and submits that, the evidence of PWs.1 and 2 clearly indicate and prove that, PW.1 was harassed, ill-treated and threatened by the petitioner. It is further stated that, the cruelty which extended to PW.1 to commit suicide, however, she decided to lead her life independently by doing own business. It is further stated that, the petitioner herein being a husband constantly and continuously harassing her on one or the other pretext, hence, she had lodged a complaint. The Courts below accepted the evidence of all the witnesses and appreciated it in right perspective and convicted the petitioner, which requires no interference. Having submitted thus, the learned HCGP prays to dismiss the petition.

7. Having heard learned counsel for the respective parties and also perused the documents along with the findings of the Courts below, it is necessary to have a look upon the point which the petitioner has raised in this revision petition.

8. It is the submission of learned counsel for the petitioner that, the complainant being the second wife, the Courts below should not have convicted the petitioner for the offence under 498-A of IPC since the basic ingredients of the said provision do not attract. As regards the said contention, it is necessary to refer the provision of Section 498-A of IPC.

"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."*

9. On perusal of the above said provision, it shows that the husband or relative of a woman subjecting her to

cruelty, shall be punished with imprisonment. It is needless to say that, "woman" in the said definition means and includes, legally wedded wife. As per the evidence of PWs.1 and 2, it is an admitted fact that, the complainant was the second wife of the petitioner.

10. The prosecution has to establish that, the marriage of PW.1 is legal or she is the legally wedded wife of the petitioner. Unless, it is established that, she is the legally wedded wife of the petitioner, the Courts below ought to have acted upon the evidence of PWs.1 and 2 that, PW.1 was the second wife. Once PW.1 is considered as second wife of the petitioner, obviously, the complaint filed against the petitioner for the offence under Section 498-A of IPC ought not to have been entertained. In other words, complaint filed by the second wife against the husband and her in-laws is not maintainable. The Courts below committed error in applying the principles and also the law on this aspect. Therefore, interference by this Court in exercising the Revisional jurisdiction is justified.

11. My view is fortified by the dictum Hon'ble Supreme Court in the cases stated *supra*. Now, it is relevant to refer the dictum of the Hon'ble Supreme Court to arrive at a conclusion

as to whether the second wife is permitted to lodge the complaint against the husband for the offence under Section 498-A of IPC.

12. The Hon'ble Supreme Court, in paragraph No.2 of *Shivcharan Lal Verma's* case, referred to supra, has held as under:-

"2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 of the IPC to be unconstitutional, was under re-consideration by the Constitution Bench. The Constitution Bench finally disposed of the matter in Criminal Case No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid Constitution Bench decision, two questions arise for consideration in this appeal. One, whether the prosecution under Section 498-A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr Khanduja, learned counsel for the appellant so

far as conviction under Section 498-A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of a valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498-A IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, makes it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned Sessions Judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not find any infirmity with the conviction of the appellants under Section 306 IPC. So far as the sentence is concerned, they have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case, we reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled and they must surrender to undergo the remaining period of sentence.”

13. Similarly, the dictum of the Hon'ble Supreme Court in the case of *P.Sivakumar*, referred to supra, in para 7 of the said judgment, it reads thus:

"7. Undisputedly, the marriage between the appellant No.1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High Court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible."

14. The ratio of these two judgments of the Hon'ble Supreme Court clearly indicates that, if the marriage between the husband and wife ended as null and void, the offence under Section 498-A of IPC cannot be sustained.

15. Admittedly, in the present case, the complainant in her evidence, PW.2 being the mother of PW.1 both have consistently deposed and admitted that, PW.1 is the second wife of the petitioner. Accordingly, the concurrent findings of

the Courts below in recording the conviction requires to be set aside.

16. In the light of the observation made above. I proceed to pass the following:-

ORDER

- (i) The Criminal Revision Petition is *allowed*.
- (ii) The judgment of conviction and order of sentence, dated 18.01.2019 in C.C.No.3980/2011 on the file of the Court of the Principal Civil Judge and J.M.F.C-I at Tumakuru and the judgment and order dated 04.10.2019 in Crl.A.No.2/2019 on the file of the Court of the VI Additional District and Sessions Judge at Tumakuru are set aside.
- (iii) The petitioner is acquitted for the offence under Section 498-A of IPC.
- (iv) Bail bonds executed, if any, stand cancelled.

**Sd/-
JUDGE**