



Presented on : 11.01.2013  
 Registered on : 11.01.2013  
 Decided on : 16.03.2019  
 Duration 06Y 02M 05D

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, COURT  
 No.10, NAGPUR**

(Presided over by Smt. S. J. Shinde)

**Regular Criminal Case No. 3**

**Exh. 101**

State of Maharashtra,  
 Through Police Station Officer,  
 Police Station, Gittikhadan,  
 Nagpur.

... **Prosecution**

**Versus**

S. [redacted] na,  
 Aged [redacted] years, Occ : Software consultant,  
 [redacted] n,  
 Chennai.

... **Accused**

**OFFENCE PUNISHABLE UNDER SECTION 498-A OF INDIAN  
 PENAL CODE.**

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 Mrs. S. M. Goge, APP for the State  
 Adv. Shri. D. L. Dharmadhikari for accused.  
 .....

**J U D G M E N T**

(Delivered on 16<sup>th</sup> March, 2019)

1 Accused is facing the trial for the offence punishable under Sec. 498-A of Indian Penal Code.

In short, the case of prosecution is that;

2 Marriage of informant [redacted] is solemnized on 15/12/2002 with accused and after marriage she went to reside at Chennai. There she resides at 15 days along with her grandmother. Accused was working as Software Engineer at America. After obtaining VISA, informant also went to America on January 2003 and she resides there along with accused till October 2005. She begotten female child namely [redacted] i. Thereafter, they shifted at Melbourne, Australia. There she begotten male child namely [redacted] i. On 14/12/2010 she returned with her children to Nagpur due to ill-treatment given by accused. Since 22/2/2010 she resides at K.T. Nagar, Nagpur in a rented premises. On the occasion of marriage of brother of informant, accused came to informant at Nagpur on 16/1/2011. Accused asked informant to come with him at Australia but informant refused the proposal of accused and on that count accused quarreled with her and ill-treated her physically and mentally. Thereafter, again accused came to Nagpur and asked informant to stay with him at America but as informant refused him, he beat her before children and thrown the household articles. Whenever, accused came to Nagpur at that time he quarreled and ill-treated the informant.

3 On 1/5/2012 accused came to informant at Nagpur and after residing there for one week he took away his both children with him at

Chennai without informing the complainant. After 2 weeks, he left his children at informant. Without any reason, accused beat the informant on the count of staying with her at foreign country. Accused defame the informant by sending E-mail to the relatives of informant. On 19/5/2012 accused send notice to informant regarding divorce and informant replied to the said notice. Thereafter also, accused used to come to informant but as she restricted him for that, he resides at parents of informant and ill-treated informant. At last, the informant went to P.S. Gittikhadan and lodged report against accused.

4 On the basis of report lodged by the informant, crime bearing No.449/2012 came to be registered at Police Station Gititkhadan for the offence punishable u/s 498-A of IPC. Thereafter, the investigation officer arrested the accused, recorded statements of witnesses & informant and after completion of investigation, he filed final report against the accused.

5 My learned predecessor has framed charge for the offence punishable u/s 498-A of IPC vide Exh.45. The contents of the charge were read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed to be tried.

6 Having gone through the evidence and after hearing rival submissions of the parties, following points arise for my determination and I have recorded my findings with reasons thereon as under :-

| Points                                                                                                                                                                                                                                                                                                                            | Findings                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 1] Whether this court has jurisdiction to try this case ?                                                                                                                                                                                                                                                                         | No.                              |
| 2] Does the prosecution prove that since 16/1/2011 till 18/5/2012 at Flat No. / , F / Apartment, / colony Nagpur, accused being husband of informant / i subjected her to cruelty physically and mentally for non fulfillment of his demand of residence at abroad and thereby committed an offence punishable u/s 498-A of IPC ? | No.                              |
| 3] What order ?                                                                                                                                                                                                                                                                                                                   | .. <u>Accused is acquitted .</u> |

### REASONS

7 In order to prove the offence against the accused, prosecution has examined six witnesses. P.W.1 / m is examined at Exh.53, P.W.2 informant / an / ia is examined at Exh.56, P.W.3 / is examined at Exh.80, P.W.4 / is examined at Exh.81, P.W.5 / n is examined at Exh.82 and P.W.6 F / til is examined at Exh.88. Regarding documentary evidence, complaint is at Exh.57 and FIR is at Exh.58.

8 Statement of accused u/s 313 of Cr.P.C. is recorded vide Exh 93 in which he denied all the allegations levelled against him and his defence is that of total denial and false implication.

**As to Point No.1 :**

9 My learned predecessor framed charge against accused below Exh.45 on 19/4/2017. As per charge, address of accused is at Chennai. However, it has come in the evidence of informant that their son / \_\_\_\_\_ and accused are Australian citizen. She further deposed that her daughter \_\_\_\_\_ is American citizen. Informant is staying in India as foreign national. It is mentioned that accused subjected complainant to cruelty of physical and mental nature by beating and abusing her for her non fulfillment of illegal demand of residence at abroad.

10 However, as per Sec.188(b) - of Cr.P.C. offence committed outside India – by a person, not being citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as it had been committed at any place within India at which he may be found.

11 Though accused arrived in India by Aircraft hence, this section is applicable. But, Provided that notwithstanding anything in any of the preceding, Sections of this chapter, no such offence shall be inquired into or try in India except with the previous sanction of the Central Government.

12 In present case, I.O. did not file any document regarding sanction of Central Government. It has come in the evidence of informant that accused, informant and their kids are foreign national. So as to prosecute foreign national, sanction of central government is

essential. Indian Penal Code is applicable to the whole of India. Alleged offence committed by accused is within India. This offence is domestic offence and provisions are applicable to the citizens of India. However, neither informant nor accused are citizens of India. Hence, prima facie it appears that this court is not having jurisdiction to try the present matter. Hence, I am giving my finding to Point No.1 in the negative. However, this matter may remand back by Hon'ble Appellate Court hence, I give finding to the point no.2 as well.

**AS TO POINT NO.2 :-**

13 In order to prove the case of prosecution, prosecution is obliged to prove that the accused ill-treated the informant physically and mentally which is contemplated u/s 498-A of Indian Penal Code.

14 As per the report of informant, the accused was forcing her to go with him at abroad and when informant refused to go back to abroad, he abused and beat her with fist blows. So as to prove the guilt of accused, prosecution has examined 6 witness. P.W.1 \_\_\_\_\_d \_\_\_\_\_ he is hearsay witness. P.W.2 informant I \_\_\_\_\_. She deposed in detail about her stay with accused in abroad after marriage. However, it has come in her evidence that when she refused to go at Australia along with accused, the accused used to abuse her. When she was staying at Nagpur in 2012 at that time when she returned from Australia to Nagpur there was altercations between informant and accused on the count of returning back to Australia. She further deposed that she did not lodged complaint against accused as there was

talk about mutual consent between the parties. Accused was taking suspicion on her character also. It is admitted in her cross examination that she, her son and accused are Australian citizens. She further admitted that her daughter \_\_\_\_\_ is American citizen. Informant is residing in India as foreign citizen. She do not have voting card I.D. in India. She even did not file an application regarding voting identity card.

15 It has further come in her evidence that the main cause of dispute between her and accused is to return back with accused to Australia. On various occasions accused requested her to return back but informant always refused to return back.

16 P.W.3 I \_\_\_\_\_ have deposed that when accused was returning from Chennai to Nagpur at informant, he was throwing household articles and was beating the informant. But in her cross examination, no date, time or year is mentioned. Her evidence is of hearsay nature.

17 P.W.4 \_\_\_\_\_ deposed that informant after quarreling with accused returned to India from Australia and inspite of that the husband of informant used to come to India and quarreled with her. She is also hearsay witness. In his examination in chief he only admitted that one case is pending in Family Court between accused and informant but in his cross examination nothing came on record regarding harassment to informant at the hands of accused.

18 P.W.5 \_\_\_\_\_ n is the father of informant. He also deposed that he came to know that accused was beating informant. Informant narrated the incidence of beating by the accused. His testimony is also limited and nothing came on record which shows that accused ill-treated the informant. In his cross examination he admitted that accused whenever used to visit Nagpur, he was requested the informant to return back to Australia. That reason was narrated by him to informant. He is also hearsay witness.

19 P.W.6 \_\_\_\_\_ is an I.O. who deposed that he investigated the matter, recorded statements of witnesses, arrested the accused and after completion of investigation filed chargesheet. He also admitted that accused and informant are Australian citizen and in such situation, it is necessary to communicate regarding arrest of accused to the consulate of that country. In his cross examination, he deposed that accused did not filed any evidence regarding Australian citizenship. Hence in his arrest form, he mentioned accused as Indian citizen. He further deposed that as per report given by informant, there is nowhere mentioned that accused was demanding money or dowry from her. In his cross examination he further admitted that informant narrated that accused was convincing her to go to Australia and it was the reason behind their dispute.

20 I.O. admitted that accused is foreign national inspite of that he did not obtain sanction and prosecuted him which shows irregularity

in proceeding.

21 Heard both sides at length.

22 The learned APP submits that informant has stated all happened incidents categorically pertaining to ill treatment in her examination in chief. The version of the informant is also corroborated by other witnesses. Further, accused failed to bring material contradictions and omissions on record from the testimonies of prosecution witnesses and therefore, the prosecution has proved the case beyond reasonable doubt to convict the accused.

23 Prosecution has filed following case laws; (1) Dhariwal Industries Ltd. Vs. Kishor Wadhwani and Ors. 2016 (SC) 878, (2) AIR 2009 SC 1129, Balwantsingh Vs. State of H.P. (3) 2009 Cr.L.J. 2165 Bombay High Court, Sanjay Baburao Pathrale Vs. State of Maharashtra, (4) 2013 Cr.L.J. 3441, Kerala High Court, Chami S/o Raman Vs. State of Kerala,

These case laws are not applicable to the present case.

24 On the contrary, the learned advocate appearing for accused submits that the informant has stated general allegations in her examination in chief. She has not stated about the demand of dowry or money. Informant has not narrated a single incident when she resides with accused at abroad. She narrated about the incidence at Nagpur

when she resides separately. Therefore, the prosecution has failed to prove the case beyond reasonable doubt because of cogent and reliable evidence and accused is entitled for acquittal on the basis of benefit of doubt.

He also filed citations as follows;

- (1) Manju Ram Kalita Vs. State of Asam, Cri.Appeal No. 299/2003,
- (2) Vinod Rajkrushnan Kaushik & ors. Vs. State of Maharashtra Cr.W.P. 214 of 2014,
- (3) Cri.Appeal No. 3426 of 2007 State of Andhra Vs. Madhusudan Rao.

25 After scrutinizing the evidence of witnesses and as per Sec.498-A of IPC, complainant herself admitted that she is Australian citizen. I.O. also corroborated her version regarding citizenship. Then before lodging report against any foreign national sanction of Central Government is essential. As per Sec. 188(b) provided that Previous sanction of Central Government was required which is not taken by I.O. However, there is nothing on record which shows that I.O. informed consulate regarding prosecution against accused. In case of foreign national, it is required to inform the concerned embassy but I.O. did not take efforts to inform the concerned embassy.

26 The informant herself deposed that she is foreign national. She is residing in India as a foreigner. However, if we consider in general sense that any husband will wish to stay along with his wife and children where ever he stays. In present case, accused is residing at

Australia and by natural way if he is expecting that informant and his kids should reside with him then that is not illegal or unlawful and unjust. It is the duty of every wife to stay with her husband where ever he is serving or residing. The demand of accused to stay with him at abroad is not illegal or unjust.

27        It is not the case of informant that she is residing separately from accused by any decree of separation. It has come in her evidence that talk of mutual divorce was going on. As per Sec. 498-A there is no any unlawful demand of accused to the informant for property or valuable security. Hence, ingredients of Sec.498-A of IPC are not applicable. Though there are allegations regarding mental and physical harassment of informant, other witnesses are not supporting to informant. They are only hearsay witnesses. From the evidence of other witnesses it reflects that the quarrel was on the point of returning back to Australia with accused.

*“It is not every harassment or every type of cruelty that would attract the Sec.498-A of IPC.”*

28        I also find that every matrimonial dispute on trifle reason in between husband and wife cannot be covered under the ambit of cruelty as defined u/s 498-A of IPC. Therefore, I find that the prosecution has failed to prove the case beyond reasonable doubt on the basis of testimonies of prosecution witnesses. Therefore, accused is entitled for acquittal. In the result, I answer point no.2 in negative.

**As to Point No.3 -**

29 In view of my negative finding to point no.2, accused deserve to be acquitted. Hence, in answer to point no.3, I pass the following order.

**ORDER**

- 1) : \_\_\_\_\_ a is hereby acquitted of the offence punishable under Section 498-A of the Indian Penal Code as per Section 248 (1) of Criminal Procedure Code.
- 2) Bail bonds of accused stand cancelled.
- 3) Accused to execute personal bond of Rs. 15,000/- as per Sec. 437-A of Cr.P.C.

Nagpur.  
Date : 16.03.2019

(Smt. S. J. Shinde)  
Judicial Magistrate, First Class,  
Court No.10, Nagpur.

|                              |             |
|------------------------------|-------------|
| Case argued on               | - 13/3/2019 |
| Judgment dictated on         | - 16/3/2019 |
| Transcription ready on       | - 16/3/2019 |
| Judgment checked & signed on | - 16/3/2019 |

CERTIFICATE

I affirm that the contents of this PDF file Judgment are word to word, as per original Judgment.

Name of Stenographer : S. M. Ingale.