

Supreme Court of India

Rajesh Sharma vs The State Of Uttar Pradesh on 27 July, 2017

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REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1265 OF 2017  
[Arising out of Special Leave Petition (Crl.) No.2013 of 2017]

Rajesh Sharma & ors.		Appellants
	Versus	
State of U.P. & Anr.		Respondents

JUDGMENT

Adarsh Kumar Goel, J.

1. Leave granted.

2. The question which has arisen in this appeal is whether any directions are called for to prevent the misuse of Section 498A, as acknowledged in certain studies and decisions. The Court requested Shri A.S. Nadkarni, learned ASG and Shri V.V. Giri, learned senior counsel to assist the Court as amicus. We place on record our gratitude for the assistance rendered by learned ASG Signature Not Verified Digitally signed by SWETA DHYANI Shri Nadkarni and learned senior counsel Shri Giri who in turn was Date: 2017.07.27 17:07:01 IST Reason:

ably assisted by advocates Ms. Uttara Babbar, Ms. Pragya Baghel and Ms. Svadha Shanker.

3. Proceedings have arisen from complaint dated 2 nd December, 2013 filed by respondent No.2 wife of appellant No.1. Appellants 2 to 5 are the parents and siblings of appellant No.1. The complainant alleged that she was married to appellant No.1 on 28th November, 2012. Her father gave dowry as per his capacity but the appellants were not happy with the extent of the dowry. They started abusing the complainant. They made a demand of dowry of Rs.3,00,000/- and a car which the family could not arrange. On 10th November, 2013, appellant No.1 dropped the complainant at her matrimonial home. She was pregnant and suffered pain in the process and her pregnancy was terminated. On the said version, and further version that her stridhan was retained, appellant No.1 was summoned under Section 498A and Section 323 IPC. Appellants 2 to 5 were not summoned. Order dated 14th July, 2014 read as follows:

After perusal of the file and the document brought on record. It is clear that the husband Shri Rajesh Sharma demanded car and three lacs rupees and in not meeting the demand. It appears that he has tortured the complainant.

So far as torture and retaining of the stri dhan and demanding 50,000 and a gold chain and in not meeting the demand the torture is attributable against Shri Rajesh Sharma. Rajesh Sharma appears to be main accused. In the circumstances, rest of the accused Vijay Sharma, Jaywati Sharma, Praveen Sharma and Priyanka Sharma have not committed any crime and they have not participated in commission of the crime. Whereas, it appears that Rajesh Sharma has committed an offence under Section 498A, 323 IPC and read with section 3 / 4 DP act appears to have prima facie made out. Therefore, a summon be issued against him.

4. Against the above order, respondent No.2 preferred a revision petition and submitted that appellants 2 to 5 should also have been summoned. The said petition was accepted by the Additional Sessions Judge, Jaunpur vide order dated 3rd July, 2015. The trial court was directed to take a fresh decision in the matter. Thereafter, the trial court vide order dated 18th August, 2015 summoned appellants 2 to 5 also. The appellants approached the High Court under Section 482 CrPC against the order of summoning. Though the matter was referred to the mediation centre, the mediation failed. Thereafter, the High Court found no ground to interfere with the order of summoning and dismissed the petition. Hence this appeal.

5. Main contention raised in support of this appeal is that there is need to check the tendency to rope in all family members to settle a matrimonial dispute. Omnibus allegations against all relatives of the husband cannot be taken at face value when in normal course it may only be the husband or at best his parents who may be accused of demanding dowry or causing cruelty. To check abuse of over implication, clear supporting material is needed to proceed against other relatives of a husband. It is stated that respondent No.2 herself left the matrimonial home. Appellant No.2, father of appellant No.1, is a retired government employee. Appellant No.3 is a house wife. Appellant No.4 is unmarried brother and appellant No.5 is unmarried sister who is a government employee. Appellants 2 to 5 had no interest in making any demand of dowry.

6. Learned counsel for respondent No.2 supported the impugned order and the averments in the complaint.

7. Learned ASG submitted that Section 498A was enacted to check unconscionable demands by greedy husbands and their families which at times result in cruelty to women and also suicides. He, however, accepted that there is a growing tendency to abuse the said provision to rope in all the relatives including parents of advanced age, minor children, siblings, grand-parents and uncles on the strength of vague and exaggerated allegations without there being any verifiable evidence of physical or mental harm or injury. At times, this results in harassment and even arrest of innocent family members, including women and senior citizens. This may hamper any possible reconciliation and reunion of a couple. Reference has been made to the statistics from the Crime Records Bureau (CRB) as follows:

9. That according to Reports of National Crime Record Bureau in 2005, for a total 58,319 cases reported under Section 498A IPC, a total of 1,27,560 people were arrested, and 6,141 cases were declared false on account of mistake of fact or law. While in 2009 for a total 89,546 cases reported, a total of 1,74,395 people were arrested and 8,352 cases were declared false on account of mistake of fact or law.

10. That according to Report of Crime in India, 2012 Statistics, National Crime Records Bureau, Ministry of Home Affairs showed that for the year of 2012, a total of 197,762 people all across India were arrested under Section 498A, Indian Penal Code. The Report further shows that approximately a quarter of those arrested were women that is 47,951 of the total were perhaps mother or sisters of the husband. However most surprisingly the rate of charge-sheet filing for the year 2012, under Section 498A IPC was at an exponential height of 93.6% while the conviction rate was at a staggering low at 14.4% only. The Report stated that as many as 3,72,706 cases were pending trial of which 3,17,000 were projected to be acquitted.

11. That according to Report of Crime in India, 2013, the National Crime Records Bureau further pointed out that of 4,66,079 cases that were pending in the start of 2013, only 7,258 were convicted while 38,165 were acquitted and 8,218 were withdrawn. The conviction rate of cases registered under Section 498A IPC was also a staggering low at 15.6%.

8. Referring to Sushil Kumar Sharma versus Union of India<sup>1</sup>, Preeti Gupta versus State of Jharkhand<sup>2</sup>, Ramgopal versus State of Madhya Pradesh<sup>3</sup>, Savitri Devi versus Ramesh Chand<sup>4</sup>, it was submitted that misuse of the provision is judicially acknowledged and there is need to adopt measures to prevent such misuse. The Madras High Court in M.P. No.1 of 2008 in Cr. O.P. No.1089 of 2008 dated 4th August, 2008 directed issuance of following guidelines:

It must also be borne in mind that the object behind the enactment of Section 498-A IPC and the Dowry Prohibition 1 (2005) 6 SCC 281 2 (2010) 7 SCC 667 3 (2010) 13 SCC 540 4 ILR (2003) I Delhi 484 Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction. Our experience shows that, apart from the husband, all family members are implicated and dragged to the police stations. Though arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By suitably dealing with such matters, the injury to innocents could be avoided to a considerable extent by the Magistrates, but, if the Magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the answers. The ultimate object of every legal system is to punish the guilty and protect the innocents.

9. Delhi High Court vide order dated 4th August, 2008 in Chander Bhan versus State<sup>5</sup> in Bail Application No.1627/2008 directed issuance of following guidelines :

2. Police Authorities:

(a) Pursuant to directions given by the Apex Court, the Commissioner of Police, Delhi vide Standing Order No.330/2007 had already issued guidelines for arrest in the dowry cases registered under Sections 498-A/406 IPC and the said guidelines should be followed by the Delhi Police strictly and scrupulously.

(i) No case under Section 498-A/406 IPC should be registered without the prior approval of DCP/Addl.DCP.

(ii) Arrest of main accused should be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.

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(iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law etc. should only be made after prior approval of DCP on file.

(b) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, persuasion, patience and forbearance.

(c) FIR in such cases should not be registered in a routine manner.

(d) The endeavour of the Police should be to scrutinize complaints very carefully and then register FIR.

(e) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.

(f) All possible efforts should be made, before recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility of settlement, then necessary steps in the first instance be taken to ensure return of stridhan and dowry articles etc. by the accused party to the complainant.

10. In Arnesh Kumar versus State of Bihar 6, this Court directed as follows :

11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2 All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

6 (2014) 8 SCC 273 11.3 The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4 The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention; 11.5 The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing; 11.6 Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7 Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

11. Learned ASG suggested that there must be some preliminary inquiry on the lines of observations in Lalita Kumari versus Government of Uttar Pradesh<sup>7</sup>. Arrest of a relative other than husband could only be after permission from the concerned Magistrate. There should be no arrest of relatives aged above 70 years. Power of the police to straight away arrest must be prohibited. While granting permission, the court must ascertain that there is prima facie material of the accused having done some overt and covert act. The offence should be made compoundable and bailable. The role of each accused must be specified in the complaint and the complaint must be accompanied by a signed affidavit. The copy of the preliminary enquiry report should be furnished to the accused.

12. Shri V. Giri, learned senior counsel assisted by advocates Ms. Uttara Babbar, Ms. Pragya Baghel and Ms. Svadha Shanker submitted that arrest in an offence under Section 498A should be only after recording reasons and express approval from the Superintendent of Police. In respect of relatives who are ordinarily residing outside India, the matter should proceed only if 7 (2014) 2 SCC 1 the IO is convinced that arrest is necessary for fair investigation. In such cases impounding of passport or issuance of red corner notice should be avoided. Procedure under Section 14 of the Protection of Women from Domestic Violence Act, 2005, of counseling should be made mandatory before registration of a case under Section 498A.

13. We have given serious consideration to the rival submissions as well as suggestions made by learned ASG and Shri V. Giri, Senior Advocate assisted by Advocates Ms. Uttara Babbar, Ms. Pragya Baghel and Ms. Svadha Shanker. We have also perused 243rd Law Commission Report (August,

2012), 140 th Report of the Rajya Sabha Committee on Petition (September, 2011) as well as several decisions to which our attention has been invited.

14. Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression cruelty in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand.<sup>8</sup> It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted <sup>9</sup>. The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the <sup>8</sup> Explanation to Section 498A <sup>9</sup> Preeti Gupta (supra) provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar (supra) this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable. <sup>15</sup> Following areas appear to require remedial steps :-

i) Uncalled for implication of husband and his relatives and arrest.

ii) Continuation of proceedings in spite of settlement between the parties since the offence is

non-compoundable and uncalled for hardship to parties on that account.

16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable.<sup>10</sup> Just and fair procedure being part of fundamental right to life,<sup>11</sup> interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The court has incidental power to quash even a <sup>10</sup> Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India (2012) 10 SCC 603- para 52, SCBA v. Union of India (1998) 4 SCC 409- para 47, Union of India vs. Raghubir Singh (d) by Lrs. (1989) 2 SCC 754- para 7, Dayaram vs. Sudhir Batham (2012) 1 SCC 333 <sup>11</sup> State of Punjab vs. Dalbir Singh (2012) 3 SCC 346- para 46,52 & 85, (2014) 4 SCC 453- para-21 non-compoundable case of private nature, if continuing the proceedings is found to be oppressive. <sup>12</sup> While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised.

17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on

Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.

18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned 12 Gian Singh vs. State of Punjab (2012) 10 SCC 303- para-61, (2014) 5 SCC 364- para -14 trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose.

19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions :-

i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

- (j) The Members of the committee may be given such honorarium as may be considered viable.
- (k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.
- ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;
- iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;
- iv) If a bail application is filed with at least one clear days notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;
- v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;
- vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and
- vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.
- viii) These directions will not apply to the offences involving tangible physical injuries or death.
20. After seeing the working of the above arrangement for six months but latest by March 31, 2018, National Legal Services Authority may give a report about need for any change in above directions or for any further directions. The matter may be listed for consideration by the Court in April, 2018.
21. Copies of this order be sent to National Legal Services Authority, Director General of Police of all the States and the Registrars of all the High Courts for further appropriate action.
22. It will be open to the parties in the present case to approach the concerned trial or other court for further orders in the light of the above directions.

.J.

(Adarsh Kumar Goel) .J.

(Uday Umesh Lalit) New Delhi;

27th July, 2017.