

Dungar Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-15-2014

Judge : The Honourable Mrs. Justice S.R. Waghmare

Appeal No. : Cr.R.No. 1258 of 2013

Appellant : Dungar Singh

Respondent : State of M.P.

Judgement :

By this revision under Section 397 and 401 of the Cr.P.C. petitioners Dungar Singh and Asha have challenged the order dated 28/11/2013 passed by the Sessions Judge, Alirajpur in Sessions Trial No. 162/2013 framing charges for offence under Section 306 and 498A/34 of the IPC.

Counsel for the petitioners has vehemently urged the fact that according to the prosecution case Laxmi, who is the second wife of petitioner Dungar Singh, has committed suicide by burning and she died on 29/7/2013. After investigation the charge was filed against the petitioners.

The petitioners have moved an application under Section 227 of the Cr.P.C. for discharge. However, the Trial Court had rejected the application and framed charges under Section 306, 498A/34 of the IPC against the petitioners.

Hence, the present revision petition.

Counsel for the petitioners has vehemently urged that the offences cannot be made out against the petitioners, primarily because deceased Laxmi is not a legally wedded wife of the petitioner No.1 and hence offence under Section 498A of the IPC cannot be made out against the petitioners. Relying on **U. Suvetha vs. State by Inspector of Police and another 2009 Cri. L.J. 2974** to state that cruelty to wife by the relatives of husband-girl friend or concubine of husband who are not his relative and cannot be charged under Section 498A of the IPC.

Counsel further relied on **Kashiram vs. State of M.P. 2006(I)MP Weekly Note 272** whereby the Court had held that behaviour of husband may be a cause for suicide of his wife, but cannot be equated with abettment; which requires a positive step to be taken by accused to induce commission of the offence. Counsel submitted that at the most; the allegation against the present petitioners is that they treated the deceased with cruelty regarding the domestic work that she had not done and the ingredients are thus not fulfilled. Hence, Counsel submitted that the offence under Section 306 of the IPC cannot be made out against the petitioners.

Counsel for the respondent/State, on the other hand has opposed the submissions put forth by the Counsel for the petitioners. He submitted that what is to be considered at the time of framing of charge is whether a prima-facie case exists for proceeding against the accused petitioners. Counsel submitted that the uncle of deceased Laxmi has categorically stated that a child was born out on the wedlock of petitioner Dungar Singh and deceased Laxmi and the petitioner used to treat the deceased with cruelty and hence the essential ingredients for offence under Section 498A as well as under Section 306 of the IPC are made out against the petitioners. Counsel urged that the petition was without merit and the same be dismissed.

On considering the above submissions, I find that it is an admitted fact that petitioner No.2 Asha is the first wife of the petitioner No.1 Dungar Singh and there is no divorce between them and hence the ingredients for offence under Section 498A of the IPC as framed against her is in doubt. Although it is an admitted fact that both the wives were living together with the accused Dungar Singh petitioner

No.1 and there is evidence of the deceased complaining fraud and deceit against Dungarsingh. And hence, I do not find any good ground to deviate from the grounds imposing charge against the petitioners under Section 306 of the IPC against both the petitioners.

However, considering the case of **U.Suvetha** (Supra), I find that the charge for offence under Section 498A of the IPC only against Asha petitioner No.2 needs to be reconsidered.

In this light, framing of charge against offence under Section 498A pertaining to petitioner No.2 Asha is hereby set aside. The Trial Court is directed to reframe the charges, if it deems necessary under the circumstances after giving full opportunity of hearing to both the sides. However, the offence under Section 306 of the IPC against both the petitioners need not be interfered with.

With the aforesaid observations and directions, the petition is **partly allowed** to the extent herein above indicated.

C.C. as per rules.

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