

Peter vs State of Kerala

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Court : Kerala

Decided On : Oct-05-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.Rev.Pet/1579/2004

Appellant : PETER

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945
AGAINST THE ORDER/JUDGMENT DATED 22.4.2002 IN CC 329/1999
OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,KOCHI AGAINST
THE JUDGMENT DATED 10.03.2004 IN CRA 299/2002 OF V-
ADDITIONAL SESSIONS COURT, ERNAKULAM

REVISION PETITIONER/APPELLANT/ACCUSED: PETER, S/O
JACOB,CHOOOTHAMPARAMBIL VEETTIL, NEAR C.M.S.BRIDGE,
CHERİYAKADAVU DESOM, PALLURUTHY. BY ADV SRI.THOMAS
CHAZHUKKARAN RESPONDENT/RESPONDENT/COMPLAINANT:
STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT

OF KERALA. SR PP SRI C N PRABHAKARAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The counsel for the appellant remained absent all along and as such, this court was forced to appoint an amicus curiae, Adv.Manjusha K.

2. Heard the Public Prosecutor and the amicus curiae Adv.Manjusha K.

3. The accused was found guilty of the offence

punishable under Section 498 A IPC and convicted thereunder and sentenced to undergo rigorous imprisonment for three years and a fine of Rs.5,000/- with a default sentence of three months simple imprisonment by the trial Magistrate. In appeal, the conviction was confirmed, but substantial sentence was reduced to rigorous imprisonment for one year by maintaining the fine of Rs.5,000/- with the default sentence. It is against that judgment of conviction and order of sentence, the accused came up in revision.

4. An interesting legal question was raised by

the learned amicus curiae Adv.Manjusha K. as to the permissibility of fastening criminal liability against the accused for the offence punishable under Section 498 A IPC, when the allegation of physical assault was found against and acquitted the accused for the offence under Section 324 IPC.

5. This Court had laid down the mandate to be complied with while fastening the criminal liability for the offence punishable under Section 498 A IPC in Crl.R.P.No.1 of 2007 dated 3/10/2023 (given for

reporting). The relevant portion of the said judgment

is extracted below for reference: 2. The cruelty within the meaning of Section 498A IPC consists of two clauses

(a) and (b) within the Explanation attached

to that Section. The clause (a) explains cruelty within its sphere any wilful conduct from the part of husband or the relative of husband as is likely to drive the woman to commit suicide or to cause any grave injury or danger to life, limb or health, whether physical or mental. It is by way of clause (b), even a harassment to the woman was brought under the purview of cruelty for the purpose of Section 498-A IPC, if 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 on account of failure to meet such demand, which would by itself show that the harassment must be of such a nature to exert compulsion with a view to coerce her or her relatives to meet the unlawful demand for property or valuable security. Necessarily, in order to bring home the application of clause (b) of Explanation attached to Section 498 A IPC, atleast the following ingredients should be established; (i) there should be harassment on account of an unlawful demand for any property or valuable security by the husband or his relatives (ii) it should be towards the wife or her relatives (iii) the wife or her relatives were subjected with harassment (cruelty) with a view to coerce her or her relatives to meet such unlawful demand or the harassment is on account of failure to meet such demand. Mere sporadic incidents of ill-treatment or mundane differences or trivial disputes that may arise between the spouses or their relatives in the usual course of life, though it may have its own impact, may not be sufficient to bring out the offence under Section 498 A IPC. The expression harassment is not defined in

the provision or anywhere in the Code. It should be understood in relation to the mischief sought to be suppressed under the said provision. Necessarily, the wording used coercing in clause (b) assumes importance. The word 'coercion' is also not defined anywhere in the provision or in the Code, but can find a place under Section 15 of the Contract Act, which stands for committing or threatening to commit, any act forbidden by the Code or an unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. The expression 'to enter into an agreement' as incorporated in the definition clause under Section 15 of the Contract Act, be understood substituted by the expression 'to meet any unlawful demand or on account of failure to meet such demand', for the purpose of clause (b) of Explanation to Section 498 A IPC in order to have an understanding of the word coercing used in clause (b) of the Explanation and it will give rise to an idea about what actually constitutes the expression harassment to bring home the vital ingredient of the said offence cruelty and it shall not be misunderstood with the

dictionary meaning or any act of cruelty without the element, which would constitute clauses (a) or (b) of Explanation attached to, for the purpose of criminal liability under that provision viz., Section 498 A IPC. The ingredient, which would constitute coercion must be applied so as to have an understanding of what actually amounts to 'harassment' within the meaning of clause

(b) of the Explanation. The corollary is

that in order to bring home the vital ingredient cruelty under Clause (b) of Explanation, the 'harassment' must be of the nature sufficient to coerce either the wife or her relatives to meet any unlawful demand for property or valuable security or on account of failure to meet that demand. A mere

skirmish in the ordinary life between the spouses or intermittent quarrel or even a frequent quarrel, unless constitutes the ingredient of 'harassment' for meeting an unlawful demand for property or valuable security or on account of failure to meet such unlawful demand, would not constitute or attract the criminal liability that can be fastened for the offence under Section 498 A IPC. Like wise, a demand for dowry or any property or valuable security without the ingredient of cruelty as explained under clause (a) or

(b) will not attract the said offence, but a combined effect of both these would bring home the liability under Section 498 A IPC.

3. The requirement to be established to

bring home the guilt of accused under Section 498 A has been laid down by the Apex Court in a catena of decisions such as Satish Kumar Batra and Others v. State of Haryana (AIR 2009 SC 2180), Rajendran and Another v. State Assistant Commissioner of Police (Law and Order) (AIR 2004 SC 855), Onkar Nath Mishra and Others v. State (NCT of Delhi and Another) (AIR 2008 SC (Supp) 204), M. Srinivasulu v. State of A.P.(AIR 2007 SC 3146), wherein it is settled that 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 are required to be established in

order to bring home the application of

Section 498 A IPC.

6. The legal position being settled as above, it

is not permissible to extend criminal liability under Section 498 A IPC, when the offence which would satisfy cruelty by physical assault (the offences included in Chapter XVI of IPC viz., Sections 319 to 338) was raised and found against and it would take away the very substratum of physical assault, unless there is evidence

to show mental harassment to the extent of satisfying the expression cruelty as defined and explained under that provision.

7. In the instant case, the offence which would

constitute physical assault i.e. the offence punishable under Section 324 IPC, was found against and the accused was acquitted for the said offence. It will take away the very substratum of physical assault. No satisfactory evidence was adduced to show any mental torture or harassment. On the other hand, the very substratum of physical assault was found against. Necessarily, no criminal liability can be extended for the offence under Section 498 A IPC. Both the courts below did not understand the scope and applicability of criminal liability under Section 498 A IPC. Hence, the conviction passed for the said offence and the sentence awarded will stand set aside.

8. The Criminal Revision Petition will stand

allowed by setting aside the conviction and sentence for the offence under Section 498 A IPC. The accused/petitioner is acquitted and set at liberty. Bail bond, if any executed, will stand cancelled. The assistance given by the amicus curiae Adv.Manjusha K. is placed on record with high appreciation. Sd/- P.SOMARAJAN
JUDGE msp

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