indrawati and ors. Vs. Union of India (Uoi) and ors.

indrawati and ors. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/472042

Court : Allahabad

Decided On : May-26-1990

Reported in : I(1991)DMC117

Judge : R.K. Saksena and ;Palok Basu, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 306 and 498A; Dowry Prohibition Act - Sections 3 and 4; Constitution of India - Articles 14, 19, 21 and 22

Appeal No. : Civil Misc. W.P. No. 13317 of 1990

Appellant : indrawati and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Tejpal, Adv.

Judgement :

Palok Basu, J.

1. Smt. Indrawati is the mother-in-law, Vimal Prasad is the father-in-law, Yogendra Kumar is the husband respectively, of Smt. Rita who died of burn injuries on 18-7-1987. Rikhab Sen Jain father of Smt. Rita lodged an FIR at Police Station Kotwali district Muzaffarnagar registered at Crime No. 376/87, under Section 306/498A

IPC and 3/4 Dowry Prohibition Act alleging that the petitioners treated Smt. Rita with extreme cruelty as further dowry demands could not be met by him whereupon Smt. Rita has been burn by the petitioners. After investigation, the police submitted a chargesheet and the petitioners have been committed to the Court of Sessions. Consequently, Sessions Trial No. 48 of 1988, is pending in the Court of Additional Sessions Judge, Muzaffarnagar and charges under Section 304B IPC/498A IPC and 3/4 Dowry Prohibition Act have been framed against the petitioners on 7-9-1988. This writ petition was got reported on 31-3-1990 in this Court and has been filed on 9-5-1990. After hearing the learned Counsel for the petitioners at considerable length, we dismissed the writ petition by our order dated 11-5-1990 and the reasons for our decision are stated hereunder:--

2. The petitioners' learned Counsel argued that since this writ petition has been filed under Articles 226/227 and 228 of the Constitution of India with the prayer that--

(i) The record of the Sessions Trial No. 48/1988 be called for to examine the Constitutional validity of Section 498-A IPC and Sections 2, 3 and 4 of the Dowry Prohibition Act, as those Sections are ultravires of Article 14, 19, 21 and 22;

(ii) A writ of Prohibition should issue restraining the trial judge from proceeding with the Sessions Trial;

(iii) A writ or Certiorari should issue quashing the proceedings in the Sessions Trial;

There is no alternative with this Court but to admit this petition. Apart from arguing that this petition has been made under Article 228 of the Constitution it was brought to our notice that two petitions in which similar questions have been raised earlier have already been admitted. The learned counsel went on to argue the same point over and over again without any answer to our querries that in view of the latest decision of the Supreme Court none of the points survive for decision by this Court. It has already been noted that in the instant case charges have been framed nearly two years ago and there will, therefore, be no justification whatsoever to call for the record, stay or quash the trial because 'no substantial

question of law as to the interpretation of the Constitution of India, the determination of which is necessary for the disposal of the case' is involved and as such Article 228 of the Constitution of India is not attracted at all.

3. As regards the points and the decisions relied upon by the learned Counsel for the petitioner, they may how be mentioned here one by one.

1. Section 498-A IPC violates Articles 14, 15, 19, 20 and 21 of our Constitution The learned Counsel for the petitioners has read out few passages from the case of Mitthu v. State of Punjab AIR 1983 SC page 473 and tried to show that his ground in the present petition and the observation of the Supreme Court in the said case are parallel. We do not find anything common or parallel in Mitthu's case (supra) and the present petition. The attempt of the learned Counsel is baseless. In this connection he read out two paragraphs from the decision reported in Two Lawyers Edition page 60 which also have no bearing whatsoever on the question posed in the instant case.

4. Neither from the pleadings in the writ petition nor from the argument of the learned Counsel could we decipher any coherent reason or ground on the basis of which the vires of the said Section may be challenged. Reliance on some of the principles of Mohammadan Law and the decision of the Supreme Court on one of those principles has hardly anything to do with the provisions contained in Section 498A IPC or Section 3/4 Dowry Prohibition Act. Frankly, it was difficult to co-relate to the argument with the facts of the present case,

Point No. 2.

5. The definition of cruelty as per the explanation in Section 498A is void.

6. The argument proceeds that the dictionary meaning of the word 'cruelty' should alone have been the basis of the enactments and the legislature could not have expanded its meaning by adding 'explanation'. It was further argued that the definition of the word cruelty as it exists in the Hindu Marriage Act should alone have been incorporated in Section 498A IPC and, therefore, it was argued that the 'explanations' have given uncontrolled unguided and arbitrary powers to the

prosecution. This argument is rejected as being wholly ill-founded.

Point No. 3.

7. It was argued that since Section 498A IPC has been repeated by repealing and Amending Act of 1988 (Act No. 19 of 1988) no charge could be framed against the petitioners. Reliance was placed on the fact that the Act No. 46 of 1983 whereby Chapter XX.A (having only one'Section i.e. 498A) was repealed by Act No. 19 of 1988, it should be taken that the said Section 498A stands deleted. This argument is baseless. A combined reading of Section 3 and 4 of Act No. 19 of 1988 indicates that some Amending Acts shown in the Schedule were to stand amended to the extent and in the manner mentioned in the fourth column thereof. The Schedule no doubt shows that Act No. 43 of 1983 was repealed but it has been provided that the said repealing shall not affect other enactments in which the repealing enactment has been applied, incorporated or referred to. It may be remembered that such Repealing and Amending Acts have no positive legislative effect but are designed to exclude the deed matter from the Statute book so as to diminish its bulk. Once the Amending Acts have achieved their purpose by bringing about desired amendments in the parent statutes, they out live their utility. This requires a 'legislative spring cleaning'. The provisions incorporated in the parent statutes has become a part thereof and therefore,, the Amending Act has died a natural death by the Repealing and Amending Act. This point is, therefore, without any force.

8. This takes us to the question as why the two remaining points framed by us above, emerging out of the arguments and the facts and grounds taken in the writ petition do not survive for determination by this Court. In the case of Shobharanai v. Madhukar Reddy reported in AIR 1988, Supreme Court page 121, it has been held that the definition of the word cruelty as given in Section 498A IPC may be having some different connotation then the word cruelty as stands defined in the Hindu Marriage Act. It follows, therefore, that the Supreme Court has already examined the explanation added to Section 498A IPC so as to uphold the expanded definition of cruelty.

9. In the case of Wajir Chand v. State of Haryana reported in AIR 1989 Supreme Court page 378, the conviction and sentence of Wajir Chand, the father-in-law and Kunwar Singh the husband of the deceassed in the said case Smt. Veena, under Section 498A IPC to 5 years and three years R.I. respectively have been upheld In paragraph 7 of the said Judgment the Supreme Court has considered the various clauses in the explanation and has expressed its opinion as to the various circumstances indicative of cruelty.

10. In the case of Brij Lal v. Prem Chandra reported in AIR 1989 Supreme Court page 1661, the acquittal of Prem Chandra husband of the deceased in the said case, was restored and the High Court's Judgment of acquittal of Prem Chandra of charges under Section 306 IPC was set aside. During the course of discussions it has been observed in paragraph 24 of the said Judgment as under :

'It would not be out of place for us to refer here to the addition of Sections 113A and 113B to the Indian Evidence Act and Section 498A and 304-B to the Indian Penal Code by subsequent amendments. Section 113A Evidence Act and 498A Indian Penal Code have been introduced in the respective enactments by the Criminal Law (Second Amendment) Act 1983 (Act 46 of 1983) and Section 113B of the Evidence Act and 304-B Indian Penal Code have been introduced by Act No. 43 of 1986. The degradation of society due to the pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the Legislative conscience to such an extent that the Legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113A and 113B in the Indian Evidence Act and Section 498A and 304B in the Indian Penal Code. By reason of Section 113A, the Courts can presume that the commission of suicide by a woman has been abetted by her husband or relation if two factors are present viz. (1) that the women had committed suicide within a period of seven years from her marriage, and (2) that the husband or relation has subjected her to cruelty. We are referring to these provisions only to show that the Legislature has realised the need to provide for additional provisions in the Indian Penal Code and the Indian Evidence Act to

check the growing menace of dowry deaths. In the present case, however, the abetment of the commission of suicide by Veena Rani is clearly due to instigation and would therefore fell under the first clause of Section 306 IPC.'

11. In view of the three decisions referred to above the points raised by the learned Counsel for the petitioners do not survive for decision by this Court. Consequently it follows that the earlier admission of one or two cases where similar questions relating to the vires of Section498A and 3/4 Dowry Prohibition Act may have been raised, looses all significance. These points are no more 'res-integra' in view of the aforesaid three decisions.

12. Apart from the aforesaid- rulings, we have no hesitation in saying that there is no substance in the arguments of the learned Counsel for the petitioners in as much as none of the Articles of the Constitution have been contravened by the provisions contained in Section 498A IPC and 3/4 of the Dowry Prohibition Act. The reference by the learned Counsel for the Petitioners to some of the decisions in the memorandum of the writ petition though not cited and referred to at the time of argument have absolutely no relevance to the fact of case. It can not also be said that the charges framed against the petitioners are defective or illegal. Enough time has already passed since the charges were framed. We direct the learned Trial Judge to expedite the hearing of the trial.