

Jaipal Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-09-1990

Reported in : 1990CriLJ2504; I(1992)DMC298

Judge : G.D. Dubey, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; Indian Penal Code (IPC) - Sections 304B and 498A

Appeal No. : Crl. Misc. Bail Application No. 3175 of 1990

Appellant : Jaipal Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : G.N. Chandra, Adv.

Disposition : Application rejected

Judgement :

G.D. Dubey, J.

1. The applicant has been arrested in connection with an offence punishable under Section 304B and 498A of the I.P.C.

2. The applicant is the husband of the deceased. The marriage had allegedly taken place about two years before the occurrence. The deceased is said to have committed suicide in a grove near the house of the applicant by burning herself to death on 2.6.1989. The post-mortem report says that deceased has pregnancy of eight months. The annexure submitted by the applicant regarding the statement of some other witnesses themselves show that the applicant was demanding Rs. 5,000/- as dowry from the father of the deceased. It has been contended that these witnesses are of far off distances and are merely chance witnesses.

3. It has been argued by the learned Counsel for the applicant that Section 498A of the Indian Penal Code was incorporated in the code by Criminal Law amendment Act 46 of 1983. Since this Act has been repealed by Repealing and Amendment Act No. 19 of 1988, the said Section 498A is no longer on statute book, therefore, the applicant could not be arrested and prosecuted under the said Section.

4. I have heard the Counsel for the state also.

5. The effect of such Repealing and Amending Act passed earlier by the Parliament were considered in several cases. In Khuda Bux v. Manager Cale Press : (1954)IILLJ13Cal a Division Bench of Calcutta High Court had considered the effect of Repealing and Amending Act. It has observed :

'Such acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only objects of such Acts which in England are called statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care'.

6. In Jethanand v. State of Delhi : 1960 CriLJ160 the Hon'ble Supreme Court had considered the effect of repealing and amending Act. It was observed that the

main object of a repealing and amending Act is only to strike out the unnecessary Act and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind.

7. In this case Section 6(1-A) had been added in Indian Wireless and Telegraphy Act by an Amending Act of 1949. The appellant had been prosecuted for possessing a wireless transmitter in contravention of the newly added Section 6(1-A) of the Indian Wireless Telegraphy (Amendment) Act, 1949. The amending Act of 1949 by which the aforesaid Section 6(1-A) was inserted in the parent Act was repealed as a whole by a repealing and amending Act, 1952 before the alleged commission of the offence. In this repealing Act Section 4 of the repealing and amending Act had similar wording as in Clause (2) of the Section 4 of repealing and amending Act, 1988. It read :

'The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to.'

8. Interpreting this provision the Hon'ble Supreme Court of India has said that after the Section was incorporated the amending Act had served this purpose and there were no necessity of continuing it on the statute book. Despite passing of repealing and amending Act, it was observed that, Section 6(1-A) of the Indian Wireless and Telegraphy Act continued in existence in the statute book. Consequently the conviction was maintained even though the offence Under Section 6(1-A) of the Act had been committed after enactment of the repealing and amending Act of 1952. In this case the Supreme Court had approved the dictum laid down in the case of Khuda Bux by Calcutta High Court. The Supreme Court had also referred to Judicial committee in Secretary of State v. Hindustan Co-operative Insurance Society .

9. Considering the law laid down in the above mentioned cases I find no force in the contention of the applicant that Section 498A can not be deemed to be in existence at the present.

10. On the facts alleged in the present matter against applicant I do not find it a fit case for bail.

