

Bashir Mohammed and anr. Vs. Peer Khan

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Court : Rajasthan

Decided On : Mar-01-1972

Reported in : 1972WLN139

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Revision No. 428 of 1971

Appellant : Bashir Mohammed and anr.

Respondent : Peer Khan

Disposition : Petition allowed

Judgement :

L.S. Mehta, J.

1. The brief facts of this case are that accused Mst. Jannat is the married wife of complainant Peer Khan She had been married to him some 15 years ago. Subsequently Peer Khan fell ill and was admitted to Baran Hospital Accused Bashir Mohammad, brother of Peer Khan, developed illicit connection with Mst. Jannat during the illness of her husband. Jannat started living with Bashir Mohammed. Peer Khan, therefore, made a complaint in the Court of Sub Divisional Magistrate, Baran, under Sections 497 and 498, I.P.C. The Sub-Divisional Magistrate by his order, dated November 6, 1970, discharged accused

Bashir Mohammed and Mst. Jannat. A revision petition was presented to the Court of Additional Sessions Judge, Baran, against the above order. The relevant portion of the order of learned Additional Sessions Judge runs as below:

This evidence is sufficient for proceedings with the accused persons under Section 498, I.P.C. because from this evidence a prima facie case is made out against both the accused persons.

Both Mst. Jannat and Bashir Mohammed felt aggrieved against the above order and have taken this revision-application in this Court. The revision-petition was admitted only in respect of Mst. Jannat

2. The only legal point which merits consideration is whether Mst. Jannat can be held liable for the offence under, Section 498, I.P.C. In the case of adultery it is distinctly enacted in Section 497, I.P.C. that a wife is not punishable as an abettor. It is, therefore, inconsistent to punish her as an abettor of the minor offence under Section 498, I.P.C. See in *Re Balambai* 26 ILR Mad. 463, Abetment can as given in Section 107, I.P.C. be constituted (1) by instigating a person to commit an offence; or (12) by engaging in a conspiracy to commit it; or (3) by intentionally aiding a person to commit it. Abetment implies a certain degree of activity in the abettor. Enticement donates a state of passivity on the part of the woman and as such none of the ingredients of Section 107, I.P.C. is likely to be attracted.

3. The last sentence in Section 497, I.P.C. reads:

In such a case the wife shall not be punishable as an abettor.

This provision obviously appears to be discriminatory to Article 15 of the Constitution of India. The relevant portion of Article 15 of the Constitution is this:

The State shall not discriminate against any citizen on grounds only of...sex.

But Clause (3) of the same Article lays down:

Nothing in this article shall prevent the State from making any Special provision for women....

It cannot be held that Clause (3) should be confined only to provisions which are beneficial to women. The provision which prohibits punishment does not tantamount to a licence to commit an offence. Article 14 of the Constitution, set out in Part III of the Constitution Sex is a sound classification and is general in nature and has to be read with other provisions of the Constitution & the Constitution itself provides for special provisions in the case of women and children. The two Articles read together validate the impugned clause in Section 497, I.P.C. vide Yusuf Abdul Aziz v. The State of Bombay 1954 SCR 930.

4. For the foregoing reasons, learned Additional Sessions Judge, Baran, has taken a wrong decision that Mst. Jannat should also be prosecuted under Section 498. I.P.C. This revision-petition filed by Mst. Jannat is accordingly accepted. The judgment of the Court below qua Mst. Jannat is quashed and she is discharged.

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