

Devendera Kumar Vs. State and ors.

Devendera Kumar Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/757617

Court : Rajasthan

Decided On : Dec-05-1996

Reported in : II(1997)DMC311; 1997(1)WLC513; 1996(2)WLN530

Judge : A.K. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A

Appeal No. : Crl. Misc. Petition No. 351 of 1991

Appellant : Devendera Kumar

Respondent : State and ors.

Advocate for Def. : Chandra Lekha, P.P.

Advocate for Pet/Ap. : B.M. Agarwal, Adv.

Disposition : Petition allowed

Judgement :

A.K. Singh, J.

1. Heard the learned Counsel for the petitioner and learned Public Prosecutor appearing for non-petitioner No. 1. No body has appeared for non-petitioners No. 2 and 3. The facts may be summarised as below :

2. On 25th October, 1989 Shri Sheokaran lodged the FIR at the Police Station, Sangaria alleging commission of offences under Sections 498A and 406, IPC. On the basis of the information given by Sheokaran, the Police registered a Criminal Case No. 284 of 1989 against the petitioner and the members of his family. After investigation the Police submitted a final report under Section 173, Cr. P.C. and stated therein that no offence was proved against the accused persons. The order dated 4.4.1991 passed by the learned Munsiff and Judicial Magistrate, Sangaria shows that on 3.11.1990 Sheokaran filed a protest petition in which he stated that a compromise was effected and that after the alleged compromise, Devendra Kumar obtained a house and started living with Smt. Geeta and after a few days he went away saying that he would be returning within 2-3 days but did not return and deserted his wife Geeta. It was also stated that after the alleged desertion Smt. Geeta gave birth to a son but her husband did not visit his wife and his son. The learned Munsiff and Judicial Magistrate recorded the statement of Smt. Geeta and other witnesses.

3. The learned Munsif and Judicial Magistrate obviously conducted an enquiry under Sections 200 and 202, Criminal Procedure Code on receiving the protest petition. After considering the evidence produced before him, the learned Munsif and Judicial Magistrate came to the conclusion that the allegations regarding beating were not prima facie proved but it was made out while Devendra Kumar was living with Smt. Geeta, he went away saying he would return within 2-3 days but did not return and that this act of desertion amounts to cruelty within the meaning of Section 498A, 1PC. The learned Munsif and Judicial Magistrate, therefore, issued process against the accused-petitioner under Section 204 of the Criminal Procedure Code for the offence under Section 498A of the Indian Penal Code.

4. The learned Counsel for the petitioner has submitted that the view taken by the learned Munsif and Judicial Magistrate is legally incorrect. Therefore, the issue of process under Section 204, Cr. P.C. against accused amounts to abuse of process of the Court and on this ground the order passed by the learned lower Court deserves to be quashed.

5. I have carefully considered the facts and the circumstances of this case. The reason for issuing process against the petitioner was that in the opinion of the learned Judicial Magistrate from the evidence it appeared that the petitioner deserted Smt. Geeta by going away from the house in which the petitioner was living with her and not returning to his wife according to his promise. The learned Public Prosecutor has tried to support the order of the learned Magistrate.

6. So far as the offence under Section 498A of the Indian Penal Code is concerned, it is not every kind of cruelty which constitutes an offence under this section. Explanation given below Section 498A of the Indian Penal Code provides that cruelty, for purpose of this section, means any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or harassment of the woman whether such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The explanation contemplates cruelty of two kinds. The first kind of cruelty is that which is detrimental to life, limb or health of the woman and the second kind of cruelty consists of harassment with a view to coerce her or any person related to her for fulfilment of any unlawful demand or such harassment on her failure or any person related to her to fulfil the unlawful demand. Simple desertion of wife by the husband does not appear to be covered by the explanation given below under Section 498A of the Indian Penal Code. It is well established that penal provisions should be construed strictly. The explanation given below Section 498A of the Indian Penal Code does not warrant the view that simple desertion of wife by the husband amounts to cruelty. In the facts and circumstances of a case, the act of the petitioner for which the learned Magistrate has proceeded against him on the assumption that the act amounts to cruelty punishable under Section 498A of the Indian Penal Code, does not constitute an offence under Section 498A of the IPC. In these circumstances, I have no hesitation in coming to the conclusion that issue of process against the petitioner for offence under Section 498A of the Indian Penal Code was not authorised by law and amounts to abuse of the process of the Court. The order dated 4.4.1991 passed by the learned Judicial Magistrate, Sangaria, therefore, deserves to be quashed and is hereby quashed. The final

report submitted by the Police shall be disposed of according to law, in view of the order of this Court. A copy of this order be sent to the learned Judicial Magistrate, Sangaria for information and necessary action.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com