

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.10951 OF 2022

Between:

Smt. B.Nagamani.

... Petitioner

And

The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.03.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No.10951 of 2022

% Dated 28.03.2023

#Smt.B.Nagamani

... Petitioner

And

\$ The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and another

... Respondents

! **Counsel for the Petitioners:** Sri Palle Srinivas Reddy

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

Sri Venkat Raghu Ramulu for R2

>HEAD NOTE:

? Cases referred

¹ (2010) 1 SCC 707

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10951 OF 2022****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner/A3 in S.C.No.21 of 2022 on the file of the District and Sessions Judge, Mahabubnagar for the offences under Sections 498-A and Section 306 of IPC.

2. Petitioner along with three others are being prosecuted for the offense under Sections 306 of IPC for the reason of A1's wife committing suicide. This petitioner is the sister of A1 and for the reason of deceased having illicit intimacy with A4, this petitioner and two others allegedly picked up quarrel with the deceased and admonished her. For the reason of continuing illicit intimacy with A4, the petitioner and A1 & A2 were harassing her physically and mentally. Further, the allegation against A4 is that he forced the deceased to divorce A1 and get married to her. Accordingly, the police filed charge sheet stating that in the said circumstances of the deceased having relationship with A4, she was harassed for which reason the deceased committed suicide.

3. Learned counsel appearing for the petitioner would submit that even accepting the prosecution case, no offence is made out under Section 498-A and Section 306 of IPC. The reason is that admonishing wife not to carry on with illicit intimacy with another man cannot be said to be abetting suicide or harassing her. For the said reason, the proceedings against the petitioner have to be quashed.

4. On the other hand, learned Additional Public Prosecutor would submit on behalf of the respondents, that under Section 113(A) of the Evidence Act presumption is against the husband and family members. In the said circumstances, when the deceased was being harassed, it is for the trial Court to decide whether the case is made out under Section 498-A and 306 of IPC. For the said reason, the criminal petition has to be dismissed.

5. The basis, according to the prosecution, for the deceased to commit suicide is the alleged intimacy with A4. This petitioner who is the sister of A1 allegedly admonished the deceased for carrying on illicit intimacy with A4 over a period of time, in spite of cautioning her.

6. “Section 498A in The Indian Penal Code

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation.—For the purpose of this section, “cruelty” means—
any wilful conduct which is of such a 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) of the woman; or
harassment of the woman where 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 is on account of failure by her or any person related to her to meet such demand.]*

7. To attract cruelty, it has to be proved that the victim was physically or mentally harassed by willful conduct or harassed for additional dowry by the husband and relatives. Only such harassment would fall within the definition of cruelty under Section 498-A of IPC.

8. Apart from the evidence that the deceased was being admonished for carrying on illicit intimacy, there is no other evidence. In the said circumstances of the deceased having an illegal intimacy with A4 and for which reason she was admonished, it does not fall within the definition of cruelty under Section 498-A of IPC. There are no instances of either beating or any such acts on behalf of this petitioner. Wife having illicit intimacy with another would in fact have an adverse effect on the husband and family, both personally and also in the society. The husband cannot sit

quite if the wife is having illicit intimacy with another person. The factum of illicit intimacy is not disputed and the person with whom illicit relation is arrayed as A4. It is understandable that if there is no illicit intimacy with another person and the husband or the family members are making false allegations against a woman. In the present case, the factum of illicit intimacy is not disputed and it cannot be said that asking the deceased to refrain from continuing illicit intimacy with A4 would not in any manner amount to abetment under Section 107 of IPC.

9. In ***Amalendupal v. State of West Bengal***¹, the Supreme Court held as under:-

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.”

¹ (2010) 1 SCC 707

10. Abetment would be active instigation by doing acts which would compel a person to commit suicide. Admonishing wife for having illicit intimacy will not in any manner amount to abetting the wife to commit suicide. Admittedly, this petitioner was already married by the time the deceased and A1 were married. The deceased and A1 were married nearly 18 years prior to the incident. Petitioner was living separately and even accepting the version of the prosecution that this petitioner in support of his brother A1 had in any manner admonished the deceased, it will not amount to an offence either under Section 498-A or Section 306 of IPC. Accordingly, the petitioner succeeds and the petition is liable to be allowed.

11. In the result, the proceedings against the petitioner/A3 in S.C.No.21 of 2022 on the file of the District and Sessions Judge, Mahabubnagar, are hereby quashed.

12. Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 28.03.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10951 OF 2022

Dt.28.03.2023

kvs