

**Court No. - 93**

**Case :-** APPLICATION U/S 482 No. - 38288 of 2023

**Applicant :-** Akhilesh Keshari And 3 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Saurabh Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard Sri Saurabh Pandey, learned counsel for the applicant and learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed for quashing the entire proceeding of the charge-sheet dated 06.12.2019 as well as the cognizance order dated 10.01.2020 in Case No. 18876 of 2021(State of U.P. vs. Akhilesh Keshari & three Others) arising out of Case Crime No. 05 of 2019, under Sections 498-A, 323, 504, 506 and Section 3/4 D.P. Act, Police Station Mahila Thana, District Sonbhadra pending in the Court of Civil Judge (Junior Division)/C.A.W., Robertsganj, Sonbhadra.

3. Facts giving rise to the present case are that opposite party no. 2 had lodged an F.I.R. dated 08.06.2019 under Section 498-A, 323, 504, 506 I.P.C. & 3/4 D.P. Act, 1961 against applicants alleging that she got married to applicant no. 1, six years back and out of their wedlock three children were also borne. However, applicants had started harassing her for dowry demand and subsequent applicants had also beaten her. Police after investigation had submitted charge-sheet dated 01.12.2019 against the applicants under Section 498-A, 323, 504, 506 I.P.C. & Section 3/4 D.P. Act and cognizance was also taken on 10.01.2022.

4. Learned counsel for the applicants contends that the impugned proceeding is illegal as opposite party no. 2, claiming herself as the wife of applicant no. 1, lodged the F.I.R. of the impugned proceeding on 08.06.2019 but the applicant got divorced from his first wife on 10.02.2022 therefore opposite party no. 2 was not the legally valid wife of applicant and on the date above F.I.R., hence no offence under Section 498-A I.P.C. as well as Section 3/4 D.P. Act is made out against the applicants. In support of his contention, counsel for the applicants has relied upon a judgment of the Apex Court in the case of **Shivcharan Lal Verma and another vs. State of Madras 17 Vol 15 SCC 369** in which the Hon'ble Apex Court observed that if the marriage itself is null and void, then prosecution under Section 498-A I.P.C. against the husband is not maintainable at the instance of the alleged wife. Apart from this, counsel for the applicant also placed reliance on the judgment **P. Shivkumar & Ors. vs. State respondent by the Deputy Superintendent of Police (Criminal Appeal Nos. 1404-1405 of 2012)**, in which judgment of **Shivcharan Lal Verma (supra)** was relied upon. It was also submitted by counsel for the applicants, though the two Judges Bench of the Apex Court in the case of **Reema Agarwal vs. Anupam & Ors. (Criminal Appeal No. 25 of 2004)** had observed that the legitimacy of the marriage for the purpose of Section 498-A and 304B I.P.C. is irrelevant. However, the subsequent judgment of **Shivcharan Lal Verma (supra)** was delivered by the larger Bench consisting of three Judges. It is established law that subsequent judgment delivered by the larger Bench will prevail over the earlier judgment of the lesser Bench.

5. Per contra, learned A.G.A. has relied upon the judgment of **Reema Agarwal (supra)** and submitted that for the purpose of

Section 498-A as well as Section 3/4 of the D.P. Act, strict interpretation regarding the validity of marriage should not be made and liberal consideration should be given to those persons who contracted for marriage and are cohabiting together.

6. After hearing counsel for the parties, it is relevant to mention Section 498-A I.P.C., which is being quoted as under:

*"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 a 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. Judgment of the Apex Court in the case of **Shivcharan Lal Verma (supra)** held that if marriage between a man and a woman is null and void, then the lady cannot pursue the proceeding under Section 498-A against the alleged husband. Paragraph two of the judgment of **Shivcharan Lal Verma (supra)** is quoted as follows:

*"This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 of the I.P.C. to be unconstitutional, was under re-consideration by the constitution bench. The constitution bench finally disposed of the matter in criminal case No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid constitution bench decision, two questions arise for consideration in this appeal. One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi.*

*There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is*

*concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the I.P.C. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, make it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned sessions judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not find any infirmity with the conviction of the appellants under Section 306 of the I.P.C. So far as the sentence is concerned, they have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case, we reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled, and they must surrender to undergo the remaining period of sentence."*

8. From the perusal of Section 498-A I.P.C., it is explicit that to attract the ingredients of this Section, a woman must be subjected to cruelty by her husband or his relative. However, the definition of the husband is unavailable either in I.P.C. or the Hindu Marriage Act of 1955. However, as per Section 5 of the Hindu Marriage Act, for a valid marriage, neither party to the marriage should have a living spouse at the time of marriage, meaning that if the first wife is alive, marriage with another woman is not valid. The relationship between such a man and woman cannot be as husband and wife. Therefore, proceeding under Section 498-A I.P.C. is not maintainable against such a husband at the instance of a second wife (not legally wedded).

9. The Apex Court's judgment in **Shivcharan Lal Verma (supra)** was again relied upon by the Apex Court (**P. Sivakumar & Ors. vs. State Respondent by the Deputy Superintendent of Police, )** in Criminal Appeal Nos. 1404-1405 of 2012 and observed that if the marriage is null and void, the conviction under Section 498-A I.P.C. is not sustainable against the husband. Paragraph 7 of the judgment of **P. Sivakumar (supra)** is quoted as follows:

*"Undisputedly, the marriage between the appellant No.1 and PW-1 has been found to be null and void. As such, the conviction under Section 498-A I.P.C. would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial judge, by elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond a reasonable doubt. In an appeal/revision, the High Court could have set aside the order of acquittal only if the findings as recorded by the trial court were perverse or impossible."*

10. From the perusal of the judgments mentioned above of the Apex Court, it is clear that strict interpretation is required when interpreting the word husband in Section 498-A I.P.C. as the I.P.C. is a penal provision, not beneficial legislation where the liberal interpretation is permissible. Therefore, this Court holds that proceeding under Section 498-A I.P.C. by the opposite party no. 2, who is not the legally wedded wife of applicant no. 1, is not maintainable against applicants.

11. So far as an offence under Section 3/4 of the D.P. Act is concerned, the main ingredients of these Sections in giving, taking or demanding dowry by any person. The word dowry has been defined in Section 2 of Dowry Prohibition Act, 1961 and for the reference Section 2 of Dowry Prohibition Act is being reproduced as under:

*"In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—*

*by one party to a marriage to the other party to the marriage; or by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."*

From the perusal of Section 2 of the D.P. Act, dowry may be given at, before or after the marriage. Therefore, for the dowry, the performance of marriage is not necessary, and even a marriage

contract is sufficient. If a male and female contracted for marriage and cohabiting together and the male partner makes any dowry demand from the female partner, then ingredients of Sections 3 and 4 of the D.P. Act are attracted. In the present case, appellants and opposite party no. 2 had been living as husband and wife and three children were also borne from their co-habitation therefore, the allegation of demand or receiving of dowry on the part of the applicants will attract ingredients of Section 3/4 D.P. Act, despite the fact, their marriage was not valid.

12. From the perusal of the record, it is clear that there is sufficient material to make out a prima facie case under Section 323, 504, and 506 I.P.C.

13. In view of the above analysis, the proceeding under Section 498-A I.P.C. in Case No. 18876 of 2021 is hereby quashed. However, the proceeding under Section 323, 504, 506 I.P.C. and Section 3/4 of D.P. Act in Case No. 18876 of 2021 is maintained. Therefore, the Court below is free to proceed against the applicants under Section 323, 504, 506 I.P.C. and Section 3/4 of the D.P. Act.

14. With the aforesaid observations, the application is partly **allowed.**

**Order Date :- 28.3.2024/Ruhi H.**