

A general overview of Section 498 – A of the Indian Penal Code



Law

KEYWORDS :

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ABSTRACT

The present paper aims to throw light on Section 498 – A of the Indian Penal Code. In the present paper I am discussing the circumstances that arose to incorporate the section, what's this section gave us, how it began to be abused and how the judiciary has made endeavours to fine tune it.

Introduction

We Indians constitute a male dominated society. Despite the fact that marriage is a highly pious and respected institution in India, our intrinsic characteristic of male dominance led to the suppression of women after marriage. The original Indian Penal Code which was drafted by the Britishers had no specific provision to deal with this India specific problem. Hence Section 498 – A was introduced in the Indian Penal Code by Criminal Law (2nd Amendment) Act of 1983 which came into force with effect from 25/12/1993. This section aims to curb cruelty meted out to the weaker spouse and savour from the whims and fancies of the man. As has already been pointed out Section 498 – A was introduced in the Indian Penal Code by Criminal Law (2nd Amendment) Act of 1983 which came into force with effect from 25/12/1993, it is also pertinent here to mention that Section 498 – A is prospective in operation which means any offence constituted before 25/12/1983 which meets out the ingredients of the section shall not be punishable under the section. This aspect was clarified by the High Court of Madras in the case *Prasanna Kumar vs Dhanalaxmi reported as 1989 CrLJ 1829*.

Section 498 - A read as under:

498-A. Husband or relative of husband or 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 -

(a) 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

(b) 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.]

A perusal of the above-mentioned provisions tells us a few things which are enumerated hereunder:

a. The provisions of this section are attracted only against the husband or his relatives. A clarification of this aspect was given by the Rajasthan High Court in the case of *Suraj Sharma versus State* where the petitioner who was having illicit relations with the husband of the deceased was let off by holding that no charge could be framed against her under Section 498 - A as she was not the 'relative' of the husband. The Hon'ble Supreme Court in *State of Punjab v. Gurmit Singh 2014(8) JT 195 : 2014(3) RLW 2131* held that **A relative who was not related to husband either by blood or marriage or adoption could not be prosecuted under the provisions of the section.**

b. The provisions of this section are attracted on the woman being subjected to cruelty: Cruelty has been explained in the explanation to Section 498 – A. It has to be established that the cruelty or harassment has been meted out to the wife so as to force her to cause grave bodily injury to herself or to commit suicide, or to compel her to fulfil illegal demand of dowry. Thus it is clear that not every type of harassment of cruelty would attract the provisions of Section 498 – A. To illustrate this the Bombay High Court in the case of *Sunil Kashinath Raimalevs State reported as 2006 CrLJ 589 (Bom)* held that sporadic incidents of ill-treatment by husband do not attract Section 498 – A as the same were aimed at pressurising the wife for divorce and not aimed at pressurising her to satisfy any demand of dowry.

c. The existence of a valid marriage: the Karnataka High Court in *Raghothamanvs State reported as 2004 CrLJ1974 (Kant.)* Cost proceedings against the accused as the marriage was declared void by a competent Court.

Latest judicial view:

That the perusal of the above-mentioned paragraphs make it clear that a specific provision in the shape of Section 498 – A was required and therefore the same was inserted in the Indian Penal Code. There has been no doubt that this specific provision has gone a long way to protect the rights of the wife. In many a circumstance the weaker wife has been saved from the whims and fancies of husband and has been spared of being subjected to grave cruelty. But the fact must not be forgotten that every coin has two sides. Eventually with the passage of time Section 498 – A has started being misused as well. Disgruntled wives have taken to this section as a handle to read vengeance against the husbands. The judiciary has taken strong notice of this. The High Court for the states of Punjab and Haryana in one of its recent cases *Paramjit Kaur v. State of Punjab 2013(4) R.C.R.(Criminal) 387 : 2014(1) Crimes 57*. Quashed the FIR under Section 498 – A as allegations had been levelled against a sister-in-law who was already married. The Hon'ble High Court noted that a general tendency to rope in all the relatives of the husband is cropping up and the continuance of such proceedings is nothing but an abuse of the process of law. The judiciary also realised that the provisions under Section 498 – A are being used as a handle to get the husband and his relatives arrested and thereafter convictions are very few and far between. In one of the very important latest judgements the Hon'ble Supreme Court of India has ordered that no arrests be made under this section unless the magistrate is satisfied that arrest has to be made in a few excerpts from this latest judgement *Arnesh Kumar v. State of Bihar 2014(8) Scale 250 : 2014 AIR* make very interesting reading and are reproduced hereunder:

"There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather

than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

6. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

Conclusion

I therefore conclude this paper very succinctly in a couple of lines by saying that Section 498 – A was very well-intentioned but with the passage of time despite the good things it is doing, has also been used as a handle of harassment by disgruntled wives. Luckily the judiciary has recognised this aspect and has started to give Section 498 – A the correct shape it always deserved.

REFERENCE

1. Ratanlal and Dhirajlal (2010). The Indian Penal Code, 32nd Enlarged Edition 2010. | 2. Various Judgements rendered by the law courts in India including the Hon'ble Supreme Court of India, the Hon'ble Punjab and Haryana High Court, the Hon'ble Bombay High Court, the Hon'ble Madras High Court and the Hon'ble Karnataka High Court. |