

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SMT. JUSTICE NANDITA DUBEY

WRIT PETITION No.8143 of 2020

BETWEEN:-

ABHISHEK SINGH S/O LATE SHRI HARENDRA SINGH, AGED ABOUT 32 YEARS, OCCUPATION-CONSTABLE (SUSPENDED) POSTED AT PRESENT RESERVE POLICE LINE, BETUL, DISTRICT BETUL (M.P.)

....PETITIONER

(BY SHRI D.K. TRIPATHI - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH PRINCIPAL SECRETARY, HOME DEPARTMENT, VALLABH BHAWAN, BHOPAL**
- 2. SUPERINTENDENT OF POLICE, BETUL, DISTRICT BETUL (M.P.)**
- 3. STATION HOUSE OFFICER, POLICE STATION-KOTWALI, BETUL, DISTRICT BETUL (M.P.)**
- 4. SEETA AHAKHE W/O SHRI ABHISHEK YADAV, R/O DESHBANDHU WARD, TIKARI, BETUL (M.P.)**

....RESPONDENTS

(BY SHRI SANJEEV SINGH – PANEL LAWYER FOR RESPONDENTS NO.1 TO 3, NONE FOR RESPONDENT NO.4 THOUGH SERVED ON 13.08.2021 THROUGH FAMILY COURT)

Reserved on : 02.08.2022

Pronounced on : 26.12.2022

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following :

O R D E R

By this instant petition, the petitioner has challenged the FIR dated 04.06.2020, registered at Crime No. 492/2020 under Section 498-A of I.P.C.

2. Factual matrix of the case shows that petitioner, who was appointed as Constable on 07.10.2015 in the respondent department on compassionate ground after death of his father. A compliant was lodged by complainant/respondent No.4 Sita Ahake that she got married to one Abhishek Yadav in May 2017 and a son was born out of this wed lock. Some dispute occurred with her husband, thereafter her husband Abhishek Yadav went away with their son. Despite search, he could not be found. The petitioner was handed the search warrant of Somil, s/o Abhishek Yadav. The

petitioner went alongwith respondent No.4 to Haryana to search for the child and by making false promise of marriage, established physical relationship with her and thereafter refused to marry her. A complaint in this regard was made to Superintendent of Police, Betul, thereafter on 29.01.2020, the petitioner and complainant were married in Arya Samaj Mandir. It was alleged that, after marriage, when she went to live with the petitioner, he and his mother treated her with cruelty and refused to give her the status of wife. On the basis of this complaint, FIR was registered at Crime No.492/2020 for the offence punishable under Section 498-A of I.P.C.

3. It is contended by learned counsel for the petitioner that petitioner was handed over the search warrant of Somil, s/o Abhishek Yadav, issued by SDM, Betul. During the execution of said search warrant, respondent No.4 contacted him and informed him that Somil is the son of her elder sister. She also informed him that she is unmarried and developed relationship with him and subsequently started pressurizing him for marriage, failing which she threatened to lodge a false complaint against him and also to commit suicide. She thereafter, made a complaint to S.P. Betul. Under such pressure, the petitioner after satisfaction that respondent No.4 is unmarried, as she has executed an affidavit in this regard, performed the marriage with her in Arya Samaj

Mandir. It is argued that after performing the marriage, the respondent No.4 continuously demanded money from the petitioner threatening that in case her demand is not fulfilled, she would make complaint with the authorities and get him terminated from the service. During these time, the petitioner got the knowledge that respondent No.4 is already married to Abhishek Yadav and she has executed a false affidavit and he has been forced into marriage on the basis of a false statement and the false affidavit that she is an unmarried lady. He also came to know that one case under Section 125 of Cr.P.C. for maintenance has been filed by respondent No.4 against her husband Abhishek Yadav and also filed an affidavit dated 17.03.2020 before the Family Court, Betul and admitted therein that she has no physical relationship with the petitioner till the date of filing of the affidavit. It is further stated that as the petitioner refused to fulfill illegal demand of respondent No.4, she made a false complaint against the petitioner, though she had already compromised with the earlier husband Abhishek Yadav and residing with him. A copy of this compromise statement dated 24.02.2020 is on record as Annexure P-4. It is argued that as the first husband of the complainant/respondent No.4 is already living, the second marriage with the petitioner in the Arya Samaj Mandir in itself is void *ab initio* and the petitioner has also filed an application under Section 12 of the Hindu Marriage Act, 1955 before the Family

Court, Betul for declaring his marriage as void. This application is also on record as Annexure P-5. It is submitted that without examining the genesis of the complaint, FIR has been registered against the petitioner. It is stated that the entire complaint is false and a fraud has been committed by respondent No.4, who is a habitual blackmailer by suppressing the very fact that she is already married and despite that made pressure on the petitioner to perform marriage in the Arya Samaj Mandir.

4. It is also pointed out by learned counsel for the petitioner that earlier also respondent No.4 has blackmailed one Amit Upadhyaya making the same allegations by making a complaint in CM helpline. Copy of the same is available on record as Annexure P-9. Other documents Annexure P-7 and P-8 also show that one Vijay Mongre (Head Constable) was also blackmailed by her in a similar manner.

5. On the basis of aforesaid facts, it is stated that the offence under Section 498-A of the I.P.C. is not made out as it presupposes valid marriage. This marriage before the Arya Samaj Mandir is void *ab initio*, as the husband of respondent No.4 is living and the marriage was performed with petitioner by fraud, under threat and coercion.

6. Per contra, the contention of learned counsel for the State is that petitioner himself has admitted that he married to respondent No.4 in Arya Samaj Mandir. Respondent No.4 has made a complaint that petitioner has treated her cruelly by assaulting on head and by fists and thrown her out of house of petitioner, which prima facie establishes that cruelty has been committed by the petitioner on his legally wedded wife and till the marriage is dissolved by a competent court, she legally remained married to the petitioner.

7. Heard the learned counsel for the parties and perused the record.

8. In the instant case, despite service of notice, respondent No.4 has not put in appearance.

9. Though it is an admitted position that complainant/respondent No.4 was already married and had a living spouse, when she contracted the second marriage with petitioner, however, there is no indication of word 'valid marriage' in Section 498-A of I.P.C. The language used therein is 'husband or relative of husband'. These words not only rope in those who are validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband.

10. The Supreme Court in the case of **Reema Aggrawal Vs. Anupam and others (2004) 3 SCC 199** has observed in para 11 thus :-

11. The question as to who would be covered by the expression 'husband' for attracting Section 498A does present problems. Etymologically, in terms of the definition of "husband" and "marriage" as given in the various Law Lexicons and dictionaries the existence of a valid marriage may appear to be a sine qua non for applying a penal provision. In Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. (AIR 1988 SC 644) a woman claimed maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). This Court applied the provision of the Marriage Act and pointed out that same was a law which held the field after 1955, when it was enacted and Section 5 lays down that for a lawful marriage the necessary condition that neither party should have a spouse living at the time of the marriage is essential and marriage in contravention of this condition therefore is null and void. The concept of marriage to constitute the relationship of 'husband' and 'wife' may require strict interpretation where claims for civil rights, right to property etc. may follow or flow and a liberal approach and different perception cannot be an anatheme when the question of curbing a social evil is concerned.

Further in para 18, the Supreme Court has held :-

18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of

dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been

declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.

11. It is well settled that save and except in very exceptional circumstances, the Court could not look to any document relied upon by the accused in support of his defence. Moreover, the constitutional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only when the allegations made in the complaint or the FIR, even if taken at their face value do not prima facie disclose the commission of any offence. The Court at that stage would not embark upon the appreciation of evidence nor it can prejudge a disciplinary enquiry, especially when the investigation is still incomplete.

12. Whether the offences are made out is a matter of trial and at this stage, I am not inclined to exercise the inherent powers to stifle a legitimate prosecution, when the investigation is still pending, nor is it proper for the Court to look into the material brought by the petitioner as the acceptability or veracity of such documents is a matter of trial.

13. No ground for quashing the FIR at this stage is made out. This petition is accordingly dismissed. No order as to costs.

(Nandita Dubey)

Judge

26/12/2022

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