

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**(Sl. No. 3007)**

**Court No. - 79**

**Case :- APPLICATION U/S 482 No. - 651 of 2019**

**Applicant :- Maan Singh And 2 Others**

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

**Counsel for Applicant :- Mohammad Zakir, Nanhe Lal Tripathi**

**Counsel for Opposite Party :- Anand Kumar Singh, G.A.**

**Hon'ble Anish Kumar Gupta, J.**

1. Heard Sri Mohammad Zakir and Sri Nanhe Lal Tripathi, learned counsel for the applicants, Sri Anand Kumar Singh, learned counsel for the opposite party no. 2 and Ms. Harshita, learned AGA for the State.

2. This application under Section 482 Cr.P.C. has been filed to quash the entire proceeding of Complaint Case No. 4827 of 2016 (Savita Devi Vs. Maan Singh and others) under section 498A, 323, 504, 506 IPC and 3/4 D.P. Act, Police Station Sarai Akil, District Kaushambi pending in the Court of C.J.M. Kaushambi.

3. The brief facts of the case are that the instant complaint case has been filed by the opposite party no. 2 alleging therein that the marriage of applicant no. 1 with the opposite party no. 2 was solemnized on 27.04.2012 and since after the marriage she was discharging her matrimonial obligations up to four years without any dispute. It is further alleged that the applicant no. 1 was already married prior to the marriage of the opposite party no. 2 with the applicant and out of that wedlock there was a child born which is applicant no. 3 herein. It is alleged in the complaint that after four years of marriage the applicant herein started harassing the opposite party no. 2 for demand of dowry and the applicants were not happy with the gifts

and dowry given by the father of the opposite party no. 2. When the aforesaid was intimated to the father by the opposite party no. 2 he came and there was a settlement and they continue to live together. Subsequently, it has been alleged that on 17.10.2016 all the opposite parties forcibly taken her in a car and dropped her at village Pure-Ghasiram and told that unless she brings Rs. Two Lacs and a car they will not take her back. It is further alleged that the intimation of such incident was given to the police, when no action was taken the instant complaint case was filed by opposite party no. 2 under section 498A, 323, 504, 506 IPC and 3/4 D.P. Act. Thereafter, the statements of witnesses were recorded under section 200 and 202 Cr.P.C. In her statement recorded under section 200 Cr.P.C. the opposite party no. 2 has alleged that the applicant no. 2 is the first wife of the applicant no. 1 and she was residing with her in the same house. However, it has been stated that at the time of marriage the applicant no. 1 had misrepresented that his first wife had died. It is further stated that she did not raise any objection and did not file any case for such misrepresentation as she thought that she and the applicant no. 2 will live together as sisters and wives of applicant no. 1. The aforesaid averments have also been supported by the witnesses Dharmraj and Nirmala Devi and both of them had categorically admitted that till four years from the date of marriage i.e. 27.04.2012, there was no dispute and there was no demand of any sought by the applicants herein, however the demands have been raised by the applicants after four years of marriage. Admittedly as per the complaint, the date of marriage is 27.04.2012 and the date when opposite party no. 2 was finally thrown out from the house is 17.09.2016 thereby till the end of the April, 2016 there was no dispute of any kind with regard to the dowry and there was no harassment for dowry. Subsequent thereto the allegations of demand of dowry has been made.

4. Learned counsel for the applicants has submitted that since from the facts, admittedly the opposite party no. 2 is the second wife of the applicant herein, therefore, she is not competent to maintain the proceedings against the applicant for the offences under sections 498A IPC. So far as the allegations of demand of dowry and torture is concerned i.e. from the facts as alleged there was no demand of

dowry or harassment up to four years of marriage and subsequent thereto the allegations have been made with regard to demand of dowry. Since the marriage of opposite party no. 2 with the applicant no. 1 was admittedly a nullity, therefore, neither the offence under section 498A IPC nor the offence u/s 3/4 Dowry Prohibition Act would be attracted in the instant case. Even if the demand has been made, the demand would not be said to have been made in connection with the marriage as the marriage itself is a nullity, therefore, learned counsel for the applicant seeks quashing of the entire proceedings relying upon the judgment of coordinate Bench of this Court vide order dated 28.03.2024 passed in **Application U/s 482 No. 38288 of 2023 (Akhilesh Keshari and others Vs. State of U.P. and Another)**.

5. Per contra learned counsel for the opposite party no. 2 submits that in her statement under section 200 Cr.P.C. the opposite party no. 2 has categorically stated that the applicant no. 1 had misrepresented her and on such misrepresentation she has solemnized the marriage with applicant no. 1 and now her life has been spoiled by the applicant no. 1 and as per the allegations as made in the complaint she has been beaten up by all the applicants, therefore, the proceedings against the applicants so far as the other offences under sections 323, 504, 506 IPC are maintainable against the applicants and cannot be quashed.

6. Learned AGA also submits that from the facts of the case since it was a second marriage the offences u/s 498A IPC as well as from the allegations as made the provisions of Dowry Prohibition Act would not be attracted in the instant case.

7. Having heard the rival submissions as made by learned counsel for the parties, this Court has carefully gone through from the record of the case, from the facts as have been stated herein above it is crystal clear that it was the second marriage of opposite party no. 2 and there was no dispute between the applicant no. 1 and opposite party no. 2 till four years of such marriage and the opposite party no. 2 was fully aware about her second marriage which is apparent from her own statement recorded u/s 200 Cr.P.C. that despite knowing the fact that it is her

second marriage she continued to live without raising any objection from such marriage. In view thereof since the marriage of applicant no. 1 and the opposite party no. 2 was a nullity the provisions of Section 498A IPC would not be attracted, the aforesaid view is fully supported from the law laid down by the Hon'ble Apex Court in **Shivcharan Lal Verma v. State of M.P (2007) 15 SCC 369**. The view taken in Shivcharan Lal Verma, has also reiterated by the Apex Court in **P. Shivakumar and others Vs. State Criminal Appeal Nos. 1404-1405 of 2012**. In **Shivcharan Lal Verma (supra)** the Apex Court has held as under :-

*"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. And in **P. Shivakumar (supra)** the Apex Court has held as under:-

*"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."*

9. In view of the categorical finding recorded by the Hon'ble Apex Court the proceedings under section 498A IPC by the second wife is not maintainable. So far as the proceedings under section 3/4 D.P. Act is concerned, it would be relevant to take note of the provisions of section 2 of the Dowry Prohibition Act which reads as follows:-

**"2. Definition of "dowry".-** In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents 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."*

10. From the plain reading of the aforesaid provision the dowry means any property or valuable security given or "**agreed to be given**" in connection with the marriage of the parties.

11. However, in the entire complaint the allegations of demand of dowry which have been made that has neither given nor agreed to have been given, therefore, the considered opinion of this Court the provision of section 3/4 Dowry Prohibition Act would also not attract in the instant case. So far as the allegations of harassment and torture are there with regard to the same it would be relevant that there is no specific allegation, and only general and vague allegations have been made by opposite party no. 2 without there being any specific issue, who actually and when had assaulted the opposite party no. 2, therefore, in the considered opinion of the Court offence u/s 323, 504, 506 IPC are also not attracted in the instant case.

12. In view thereof the instant application is **allowed** and the entire proceeding of the instant case are hereby quashed.

**Order Date :-** 13.9.2024

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**(Anish Kumar Gupta,J.)**