Supreme Court of India
Bhaskar Lal Sharma & Anr vs Monica And Ors on 18 February, 1947
Author: . .....
Bench: P Sathasivam, Ranjan Gogoi, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.435-436 OF 2014
Special Leave Petition (Crl) Nos.4125-4126 OF 2008

BHASKAR LAL SHARMA & ANR. ... APPELLANT (S)

VERSUS

MONICA AND ORS. ... RESPONDENT (S)

With
WRIT PETITION (CRL.) No. 101 OF 2013

J U D G M E N T

RANJAN GOGOI, J.

1. As ordered earlier, both the cases were heard together and are being disposed of by this common Order.

SLP (Crl.) No. 4125-4126/2008

2. Leave granted.

3. The essential facts may be noticed at the outset.

The respondent, herein, Monica, had filed a complaint under Sections 498A, 406 read with Section 34 of the Indian Penal Code (hereinafter referred to as the “Penal Code”) against the appellants and one Vikas Sharma (respondent No.2). The appellants are the father and mother-in-law of the respondent-Monica whereas the subsequently impleaded respondent No. 2 is her husband.

On 21.3.2005 the learned Metropolitan Magistrate, Patiala House, New Delhi took cognizance of the offences alleged by the respondent in the complaint petition which was numbered as 287/1A and issued summons to the appellants and the second respondent herein. Aggrieved, the appellants moved the High Court of Delhi under Section 482 of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the “Code”) for quashing the complaint. By judgment and order dated 21.1.2008 the High Court dismissed the application filed by the appellants. Against the said order the appellants moved this Court by means of two special leave petitions. By order dated 27.07.2009

leave was granted and the appeals registered as Criminal Appeal Nos. 1325-1326 of 2009 were disposed of by this Court holding that while no offence under Section 498A of the Penal Code was made out against either of the appellants, the offence under Section 406, as alleged, was prima facie made out against the appellant No. 2 alone.

4. Aggrieved by the said judgment and order dated 27.07.2009 of this Court, the respondent filed Review Petition Nos. 384-385 of 2009 which were dismissed by this Court by order dated 01.09.2009. Thereafter, the National Commission for Women as well as respondent herself filed Curative Petition (Crl.) Nos. 24-25 of 2010 and Curative Petition (Crl.) No. D 10575 of 2010 respectively which were allowed by this Court by order dated 14.03.2013. It is pursuant to the aforesaid order dated 14.03.2013 passed in the Curative Petitions that the present appeals were re-heard by us.

5. In the order dated 14.03.2013 passed in the Curative Petitions it has been observed that, "As far as the question regarding making out of a case under Section 498A I.P.C. is concerned, it has to be kept in mind that the appeals were against the initial order summoning the accused to stand trial. Accordingly, it was too early a stage, in our view, to take a stand as to whether any of the allegations had been established or not."

6. However, as in the very same order dated 14.03.2013 it was made clear that "the observations made in this order is for the purposes of the hearing of the curative petitions and should not, in any way, prejudice the outcome of the appeals, when they are heard afresh", we have proceeded to re-hear the appeals on its own merit.

We would also like to observe, at this stage, that in the present appeals the only question that would require to be decided is whether on the allegations made in the complaint petition filed by the respondent a prima facie case of commission of offences under Sections 498A and 406 of the Penal Code is made out against the appellants. We will not be concerned with such allegations made against the second respondent who, though named as accused No. 1 in the complaint, had chosen not to question the same. In fact, the said accused has been brought on the record of the present proceedings as respondent No. 2 on the basis of an application filed by the respondent Monica claiming that the addition of her husband as a respondent is necessary for the purposes of facilitating a reconciliation which, however, did not materialise though was attempted.

7. We have read and considered the statements made by the complainant (respondent herein) in the complaint petition, particularly those in paragraphs 16, 17, 18, 19, 24 and 29 thereof. The said paragraphs have also been noticed by the High Court in its order dated 21.01.2008. A detailed recital of the manner in which the present appellants and the respondent No. 2 had allegedly ill-treated the respondent-complainant after her marriage and had withheld different items of her stridhan property has been set out by the respondent-complainant in the aforesaid paragraphs of her complaint.

8. Shri Amarendra Sharan, learned senior counsel for the appellants has urged that the statements/averments made in the complaint petition, even if taken to be correct, do not make out

any offence against any of the accused appellants either under Sections 498A or 406 of the Penal Code, as alleged. Shri Sharan has laid stress on the fact that there is no averment in the complaint petition with regard to any demand for dowry by the appellants; or of any ill-treatment of the respondent by the appellants or commission of any act in connection with any such demand which could amount to 'cruelty' within the meaning of Section 498A IPC. Shri Sharan has also urged that no where in the complaint petition entrustment within the meaning of Section 405 of the Penal Code has been alleged against the appellants so as to even prima facie make the appellants liable for the offence under Section 406 of the Penal Code.

9. We disagree. 'Cruelty' as defined in the Explanation to Section 498A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression "cruelty". While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.

10. The facts, as alleged, therefore will have to be proved which only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.

11. Insofar as the offence under Section 406 of the Penal Code is concerned, it is clear from the averments made in paragraphs 16, 18, 24 and 29 of the complaint petition that it has been alleged that the appellants were entrusted or had exercised dominion over the property belonging to the respondent and further that the appellants had unlawfully retained the same. The statements made in para 6 of the complaint also alleges retention of cash and other gifts received by the respondent-complainant at the time of her marriage to the accused-appellant No. 2. In the face of the said averments made in the complaint petition, it cannot be said that the complaint filed by the respondent is shorn of the necessary allegations to prima facie sustain the case of commission of the offence under Section 406 by the appellants.

12. In view of the above, we unhesitatingly come to the conclusion that the complaint petition registered as Complaint No. 287/1A (Monica Vs. Vikas Sharma and Others) presently pending in the Court of Metropolitan Magistrate, Patiala House, New Delhi cannot be interdicted but has to be finally concluded by the learned Trial Court. We, therefore, dismiss the appeals filed by the accused and in view of the time that has elapsed, we direct that the trial be completed expeditiously and in

any case within a period of one year from the date of receipt of a copy of this order by the learned Trial Court.

Writ Petition (Crl.) No. 101/2013

13. Monica, the respondent in the Criminal Appeals dealt with by this order, has instituted this writ petition under Article 32 of the Constitution seeking the following reliefs :

> "(A) To serve notice to the Respondent No.1 Sh. Vikas Sharma through his mother Smt. Vimla Sharma who is being represented by ld. Counsel/AOR Shri Sumit Attri in SLP(Crl.) No. 4125-4126/2008.
>
> (B) To tag the instant writ petition with SLP (Crl.) No. 4125-
>
> 4126/2008 entitled Bhaskar Lal Sharma & Anr. Versus Monica & Ors.
>
> (C) To direct the Respondent No.1 to immediately pay the maintenance arrears to the tune of Rs.55,65,000(Sept 2004-June 2013 to the petitioner-wife alongwith 50% penalty amount of Rs. 27,82,500.
>
> D) To direct the Respondent No.1 to pay Rs. 93,500 per month to the petitioner from July 2013 onwards."

14. It appears that by an order dated 03.07.2007 passed under Section 125 of the Code by the learned A.C.M.M., New Delhi in Complaint Case No. 176/1/1006 maintenance has been granted to the writ petitioner at the rate of Rs. 50,000/- per month with effect from 4.9.2004. An application dated 30.11.2011 had been filed by the writ petitioner before the Family Court No. 2, Saket, New Delhi for payment of the arrears of maintenance as also the current monthly maintenance. The said petition numbered as Petition No. M-298/2011 is presently pending.

15. The order passed under Section 125 of the Code granting maintenance to the writ petitioner appears to have attained finality in law. Such an order can be executed by following the provisions of sub-Section (3) of Section 125 of the Code. The scope and ambit of the said provision of the Code has recently been dealt with in Poongodi and Another Vs. Thangavel[1] wherein reference has been made to several earlier decisions on the issue. When the enforcement and execution of an order passed under a statute is contemplated by the statute itself, normally, an aggrieved litigant has to take recourse to the remedy provided under the statute. In fact the petitioner has initiated a proceeding for execution of the order of maintenance granted in her favour. The fact that the husband (respondent herein) against whom the order of maintenance is required to be enforced lives outside the territory of India, in our considered view, cannot be a reasonable basis for invoking the extraordinary remedy under Article 32 of the Constitution inasmuch as the provisions of the Code i.e. Section 105 makes elaborate provisions for service of summons in case the person summoned by the court resides outside the territory of India. Comprehensive guidelines have been laid down by the Government of India with regard to service of summons/notices/judicial process

on persons residing abroad. In view of the remedy that is available to the petitioner under the Code and having regard to the fact that resort to such remedy has already been made, we decline to invoke our jurisdiction under Article 32 of the Constitution in facts of the present case. Instead, we direct the Family Court No. 2, Saket, New Delhi to pass appropriate final orders in Petition No.M-298/2011 as expeditiously as possible. We would also like to make it clear that in the event it is found so necessary the learned Family Court may transfer the case to the competent criminal court whereafter the concerned criminal court will make all endeavour to bring the proceeding to a early conclusion.

16. We, therefore, dispose of the writ petition in the above terms.

.....CJI.

[P. SATHASIVAM] .....J.

[RANJAN GOGOI] .....J.

[SHIVA KIRTI SINGH] NEW DELHI, FEBRUARY 18, 2014.

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[1] (2013) 10 SCC 618
