

Central Information Commission

Shri Kollu Durga Prasad vs Ministry Of Home Affairs (Mha) on 27 April, 2009

CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2007/01515 dated 12.12.2007

Right to Information Act 2005 - Section 19

Appellant - Shri Kollu Durga Prasad
Respondent - Ministry of Home Affairs (MHA)

Facts

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By two RTI applications addressed to Prime Minister's Office and Ministry of Law & Justice, both dated 25.7.07 and a third application dated 22.9.07 addressed to the President's Secretariat Shri Kollu Durga Prasad of Hyderabad has sought the following information:

Application of 25.7.07 "I would like you to study about 498A cases implementation and usage and provide detailed information for following points. If it is possible, please circulate the same information to all departments (Also to major news papers) which are involved in implementing this section.

1. What is the procedure to be following by police and judicial system when a 498A case is filed?
2. When a 498A case is filed, if in the police enquiry it was found false, what procedure to be followed.
3. What are the guidelines given to police department and judges to ensure that this act is not misused and innocent people do not suffer?
4. When Mallinath committee suggestions would get implemented.
5. When Supreme Court response for PIL would be taken into consideration when implementing section 498A.
6. Why Jharkhand High Court Decision is not applicable to entire India.
7. From the time section 498A came into place to till date, a. How many 498A cases are filed in each state, year wise, total out many people got arrested?

b. Out of these cases how many are genuine and how many are false cases. What is the average time taken for resolving each case?

c. How many are out of court settlements, how much actual court time each case is taking.

d. What is the conviction rate in these cases?

8. Please conduct a study and prepare a report of what is the life style of females who filed 498a cases and also accused in 498a cases. Has it helped anybody?

9. I would like PM's office opinion on this act."

Application of 22.9.07 "I would like you to study about 498A cases implementation and usage and provide detailed information for following points. If it is possible, please circulate the same information to all departments (Also to major news papers) which are involved in implementing this section.

1. When Mallinath committee suggestions would get implemented. If not why?

2. What is the action taken on Supreme Court response for a PIL filed against 498A Sushil Kumar Sharma vs. Union of India and Ors. Jul 19, 2005 *citation : JT 2005 (6) SC 266 by Hon'ble Judges : Ajit Pasayat and H. K.Sema, JJ, when implementing Sec. 498A.

3. Why Jharkhand High Court Decision is not applicable to entire India. Chief Justice of Jharkhand Mr. V. K. Gupta on 11.7.2001 against a case "Birendra Jha vs. The State of Jharkhand, A.B.A. No. 4654 of 2001."

4. What is the action taken by Central Government for the Judgment given by HON'BLE MR. JUSTICE J. D. KAPOOR in case No. 462/2002 19.5.2003

5. What is the action taken by Central Government for the Judgment given by JUSTICE SHIV NARAYAN DHINGRA, IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on 12.2.2007, Date of Decision: February 23, 2007. CRL. M.C. 7262/2006 which clearly talks about the procedure to be followed when these cases are filed.

6. What is the procedure to be following by police and judicial system when a 498A case is field?

7. What are the guidelines given to police department and judges to ensure that this act is not misused and innocent people do not suffer?

8. Why government is not following the rules laid by Supreme Court and high court when courts many times saying these sections are misused.?

9. Statistics of 498A cases with following details in following format:

a. No. of 498A cases filed in each state, year wise from year 1990 to till date.

b. Total No. of accused.

c. No. of people got arrested.

d. No. of people who got anticipatory bail.

- e. No. of accused who are women.
- f. No. of cases found false at FIR Stage.
- g. No. of cases found false as Trial stage.
- h. No. of cases got convicted.
- i. No. of people got convicted (Male/Female)"

The application to the PMO was transferred on 30.7.07 to the Ministry of Home Affairs and to the Chief Secretary, Andhra Pradesh, upon which Shri Durga Prasad received a response on 3.8.07 from Shri D. R. Meena, CPIO, Dep't. of Legal Affairs, Ministry of Law & Justice, as follows:

"As per section 2(f) of the Right to Information Act, 2005 a Public Authority may provide information which is held by it or under its control and a requestor is entitled for information only in respect of categories information as mentioned in Section 2(f) of the said Act. Moreover, a requestor right extend only to seeking information as defined in section 2(f) either by pinpointing the files, documents, papers and records etc or by mentioning the type of information as may be available with the specified Public Authority.

As per Government of India (Allocation of Business) Rules, 1961 the basic function of this Department is to render advice to various Ministries/ Departments of the government of India on legal matters, conveyancing etc..... You have vide your aforesaid letter sought opinion of this Department that cannot be tendered in terms of the said rules. Moreover, tendering opinion is also not covered within the ambit of the definition as defined in Section 2 (f) of the Right to Information Act, 2005. It is also evident from position explained in Para 3 above that you have not sought for any information as defined in Section 2(f) of the Right to Information Act, 2005. However, a copy of your aforesaid request is being forwarded to Ministry of Home Affairs, for action as deems fit.' He received a further response from CPIO Shri S. K. Bhatnagar, Dy.

Secretary, Ministry of Home Affairs on 13.8.07, as follows:

"You have asked for opinion and conducting study on life style of females who file 498A cases, etc. The matter has been examined in this Ministry and since you have not sought any information as defined in Section 2 (f) of the RTI Act, 2005 no action on the request is taken.' In this case appellant Shri Durga Prasad preferred two appeals:

1) To the Ministry of Home Affairs in which he has pleaded as follows:

"I would like appellate authority to consider my appeal and my first application in its entirety and directs the CPIO to provide information for each point. If information can't be provided for certain points, explanation can be given why information can't

be provided. If law minister and government take notice of this issue it would help thousands of people who have been suffering in false cases.

Supreme Court and high courts have commented many times about misuse of these cases and forwarded the Judgments to Law Ministry and other concerned government authority but it seems government has just ignored these judgments and still continuing the laws which are highly misused so I would like to know what government is doing on the issues.'

2) The other appeal of the same date is addressed to the Jt. Secretary, PMO in which he submitted as follows:

"Till now I have not received any information from CPIO's of Home Secretary, Home Affairs and Chief Secretary of Andhra Pradesh other than forwarding my application from one office to other office. The CPIO from PMO office also just forwarded my application to these offices but not bothered whether other CPIOs responded to my application or not. Other CPIOs followed same thing and they were also not bothered to answer my application. It is the responsibility of CPIO when forwarding any application to others to make sure that it is addresses on time. If PMO office and Central Government does not follow the rules laid by it then who will follow the act."

Shri S. K. Chattopadhyay, Jt. Secretary and Appellate Authority, Ministry of Home Affairs in his order of 25.9.07 responded as follows:

"The information in respect of points 8 & 9 has already been communicated to you by the Shri D. R. Meena, CPIO, Ministry of Law & Justice, Department of Legal Affairs vide his letter No. 21 (305)/2007-IC dated 3.5.2007. Shri S. K. Bhatnagar, Deputy Secretary & CPIO, MHA vide letter of even number dated the 13th August, 2007 had also drawn your attention to the reply already given to you by CPIO Ministry of Law & Justice, Department of Legal Affairs. However, inadvertently it was not intimated to you that your application has been transferred by this Ministry to the concerned CPIOs for reply in respect of points 1 to 7 of your application dated 25.7.2007. Thus, there has been no violation of the procedure on the part of Shri S. K. Bhatnagar, Dy. Secretary & CPIO and accordingly your appeal against him stands disposed off.

Anyway copies of your appeal dated 27.8.07 are being forwarded to the concerned appellate authorities in respect of the CPIOs mentioned in Para- above to whom your application was forwarded for necessary action under the Right to Information Act, 2005."

Shri Javed Usmani, Jt. Secretary to Prime Minister and Appellate Authority on his part responded on 25.10.07, as below:

"In transferring your said application to the Ministry of Home Affairs & to the Government of Andhra Pradesh u/s 6 (3) of the RTI Act, the Central Public

Information Offer of the PMO has followed the prescribed statutory provisions and has appropriately dealt with your said application.' In the meantime, Shri Durga Prasad received responses from other Departments to whom the application had been transferred by MHA, as follows:

1) From the Crime Records Bureau on 16.8.07 as follows:

"The requisite details under 498A IPC (Cruelty by husband or His relatives) for last five years from 2001 to 2005 are enclosed. The details include Cases Reported, Persons Arrested, Total Cases for Investigation, Cases found False, True Cases, Cases compounded or withdrawn, Cases in which Trials completed, cases convicted and conviction rate during 2001 to 2005.'

2) From CPIO Shri N. N. Perumal, Director, Judicial, Judicial Cell of the Ministry of Home Affairs. On the other hand, Shri Kollu Durga Prasad received a more exhaustive reply dated 12.11.07 as below: "Reply to Question Nos. (i) & (iii): The criteria/ guidelines followed in registering a case under section 498A is similar to registering any other cognizable offence as laid down in the Code of Criminal Procedure, 1973. Particularly, Chapter V & VI are applicable as far as arrest of persons or processes to compel appearance.

Reply to Question No. (ii): Section 182 and 211 of Indian Penal Code provide punishment for making wrong complaint and false charges of offence. Similarly Section 358 of Code of Criminal Procedure, deals with cases of groundless arrests.

Reply to Question No. (iv): Acceptance/ implementation of the recommendation/ suggestions made by the Mallimath Committee would require amendments to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 through an amendment Bill. Since the Criminal Law and the Criminal Procedure are on the Concurrent List of the Seventh Schedule to the Constitution of India and criminal laws are administered by the State Governments, any amendment to them requires consultation with the States. The report is being processed in consultation with the State Governments and no time frame can be fixed.

Reply to Question No. (v): The Malimath Committee on Reforms of Criminal Justice System in its Report has inter-alia recommended to make Section 498A bailable and compoundable. Acceptance/ implementation of the recommendation/ suggestions made by the Mallimath Committee would require amendments to the Indian Penal Code 1860. Any amendment to the Indian Penal Code requires consultation with the States. The report is being processed in consultation with State Governments and no time frame can be fixed.

Reply to Question No. (vi): The decision/ judgment of a particular High Court is not applicable to the entire country as in the case of a judgment/ decision of the Supreme

Court of India. However such decision / judgment of a High Court has a persuasive value in respect of other High Courts."

The latter reply was, as can be seen, received by Shri Kollu Durga Prasad after he had received orders on the first appeal from the Ministry of Home Affairs. This information has not been challenged in appeal. The response received from the National Crime Bureau, however, was challenged in an appeal on 27.8.07 addressed to Jt. Secretary (CS) Shri K. Skandan, MHA received in NCRB on 29.8.07 from MHA to which a reply was sent by Shri AC Awasthy Dy. Director (ANT), Appellate Authority, NCRB on 1.10.07 providing the following information:

"Data on Section 498A IPC is available with NCRB from the year 1995. The State/ UT wise and year wise details of cases reported, persons arrested total cases for investigation, cases found false, true cases, cases compounded or withdrawn, cases in which trial completed cases convicted and conviction rate from 1995 to 2005 are enclosed herewith.' This decision in first appeal has not been challenged.

The application to the President's Sectt. was on its part transferred on 5.10.07 to the MHA and the Deptt. of Legal Affairs. MHA in turn transferred the matter to the Dy. Secy., Legal Affairs, which in turn through its letter of 15.10.07 further transferred the matter to the MHA Judicial Cell, which in turn responded to the application of Shri Kollu Durga Prasad on 12.11.07, through a letter of CPIO Shri NM Perumal, Director as follows :

"Reply to Question No. (1) Acceptance / implementation of the recommendation / suggestions made by the Mallimath Committee would require amendments to the Indian Penal Code 1860 and the Code of Criminal Procedure, 1973 through an amendment Bill. Since the Crime Law and the Criminal Procedure are on the Concurrent List of the Seventh Schedule to the Constitution of India and criminal laws are administered by the State Governments, any amendment to them requires consultation with the States. The report is being processed in consultation with the State Governments and no time frame can be fixed.

Reply to Question Nos. (5) & (8) No guidelines were received by this Ministry relating to section 298A.

Reply to Question No. (3) :

The decision / judgment of a particular High Court is not applicable to the entire country as in the case of a judgment / decision of the Supreme Court of India. However, such decision / judgment of a High Court have a persuasive value in respect of other High Courts.

Reply to Question Nos. (6) & (7) The criteria / guidelines followed in registering a case under section 498A is similar to registering any other cognizable offence as laid down in the Code of Criminal Procedure, 1973, Chapter V & VI are applicable as far as

arrest of persons or processes to compel appearance.

Section 182 & 211 of Indian Penal Code provide punishment for making wrong complaint and false charges of offence. Similarly Section 358 of Code of Criminal Procedure deals with cases of groundless arrests."

Appellant's prayer before us in second appeal is as below:

"I would like CIC, Second appellate authority to consider my appeal and my first application in its entirety and directs the CPIO's to provide information for each point as detailed as possible and also why they have not provided the required information on time.

Supreme Court and high courts have commented many times about misuse of these cases and forwarded the Judgments to Government and concerned government authority but it seems government has just ignored these judgments and still continuing these gender biased laws which are highly misused and thousands of innocent people suffering. So I would like CIC to look into my appeal with kindness and direct the PIO to provide detailed information and also direct the government take necessary action on my application."

In response to our appeal notice CPIO Shri S. K. Bhatnagar, Dy. Secy.

Submitted his letter of 25.3.09 pleading as follows:

"Shri Prasad has alleged in his second appeal to CIC that the reply received by him from Shri Perumal is vague and casual. It is requested that the hearing may be attended by the present CPIO to present the case in respect of Judicial Division.' The appeal was heard through videoconference on 24.4.2009. The following are present:

Appellant at NIC Studio, Hyderabad Sh. Durga Prasad Respondents at CIC Studio, New Delhi Sh. M. K. Sharma, Addl. LA & CPIO MoL Sh. R. K. Srivastava, ALA & CPIO MoL Sh. A. K. Srivastava, S.O. MoL Sh. R. P. Nath, Jt. Secy., MHA Sh. S. K. Bhatnagar, D.S., MHA Sh. K.K. Majumdar, U.S., MHA Sh. Mohinder Singh, Dir. , MHA Sh. R. B. Singh, S.O., NCRB Sh. Amit Agrawal, Director & CPIO, PMO We noted that the portion concerning PMO has already been resolved and the CPIO of that public authority is not required. Shri Agrawal, Director, PMO was, therefore, permitted to leave.

Appellant Shri Durga Prasad submitted that there are court orders enjoining certain action on Govt. with regard to implementation of Sec. 498A IPC i.e. harassment of the wife by the husband and his relative and inadequate dowry or non-fulfillment of demands of dowry. He submitted that what he wanted to know was what had been done in compliance of the orders of the Courts. In this matter he has specifically

quoted the judgment of Hon'ble J.D. Kapoor J. of the Delhi High Court in CRL R 462/2002 of 19.5.03, Savitri Devi vs. Ramesh Chand & Ors in which the Hon'ble Justice has held as follows:

"31. there is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.

32. These ground realities have persuaded this court to recommend to the authorities and lawmakers to have a review of the situation and legal provision.

33. Copy of the order is sent to Law Secretary, Union of India."

Shri Kollu Durga Prasad has quoted very extensively from the following judgments in his application before the President's Secretariat:

"IN THE HIGH COURT OF DELHI CRL. M. 7262/2006 Date of Decision: February 23, 2007 Shiv Narayan Dhingra J."

"IN THE HIGH COURT OF DELHI CRL. R / 2002 Date of Decision: May 19, 2003 Savitri Devi Versus Ramesh Chand and Ors. J. D. Kapoor J."

"IN THE HIGH COURT OF KARNATAKA Criminal Petition no.4121/2003 Date of Decision April 15, 2005 AC Kabbin J In his argument, however, he has specifically relied on the decision in CRL R 426/2002 Savitri Devi vs. Ram Chander & Ors. of the High Court of Delhi.

He was aggrieved with the response from MHA, which he found to be of general nature and does not address the specific question raised by him. However, PIO Sh. Mohinder Singh, Director, Judicial Cell, MHA submitted that such information as is held by the Judicial Cell, which is the nodal office in matters of this nature has been provided to appellant. In addition, Shri M. K. Verma, Addl. L.A. & CPIO Deptt. of Legal Affairs submitted that since the decision of the Delhi High Court pertains to a question concerning women, the matter had been referred to the Ministry of Women & Child Development on 6.2.08. Shri Kollu Durga Prasad, however, submitted that he had received a response from MOW&CD in which the latter has informed him that they have no information in this matter. A copy of this response was shown to us in the hearing.

DECISION NOTICE Having heard the arguments and examined the records, we find that all information that is held by the public authorities impleaded in the appeal and present in the hearing, has indeed been provided to Shri Kollu Durga Prasad. In response to his question, as to which Ministry is to be held responsible for compliance with the orders of the High Court of Delhi in CRL R 426/2002 -

Savitri Devi vs. Ram Chander & Ors., we have examined the complete decision of Hon'ble J. D. Kapoor J. In this judgment the learned Judge has dealt extensively with matters relating to dowry death and cases registered u/s 498A/406/306 IPC arising out of domestic violence. He has come to the following conclusion:

"27. It is rightly said sometimes that the remedies are worse than the perils or disease. Having seen and experienced the enforcement of these laws for decades, time has come to take stock and review them as thousands of marriages have been sacrificed at the altar of this provision. In one metropolis alone, thousands divorce cases arising from the cases under Section 498A/406 IPC are pending in Courts. There are equal or more numbers of marriages which are in limbo. What else is it if not a social catastrophe? This should be a matter of concern for social scientists, lawmakers and Judges also. Sterner provisions have failed to make any dent. Menace and evil of dowry is still looming large. In the words of Supreme Court (Pawan Kumar's case AIR 1998 SC 958) in spite of stringent measures, sections of society are still boldly pursuing this chronic evil to fulfill their greedy desires.

28. It does not mean that the wolves masquerading in the human flesh should be given a free hand. They should rather be dealt with iron hand. Again it is because of tendency to involve innocent persons that the Supreme Court has cautioned the court.

29. To start with, marital offences under Sections 498A/406 IPC be made bail able, if no grave physical injury is inflicted and necessarily compoundable. If the parties decide to either settle their disputes amicably to salvage the marriage or decide to put an end to their marriage by mutual divorce, they should be allowed to compound the offences so that criminal proceedings don't chase them if they want to start their marital life afresh or otherwise. The past should not haunt them nor the hatred they have buried should be allowed to be dug up and mar their present life or future married life.

30. Lastly in view of sensitivity of such offences and in order to avoid clumsiness in human relations and viewing this problem from human and social point of view, and the law, as it stands today it is required that the investigation into these offences be vested in civil authorities like Executive Magistrates and after his finding as to the commission of the offence, cognizance should be taken. Till such a mechanism is evolved, no police officer below the rank of ACP for the offences under sec. 498A/406 IPC and D.C.P. for the offence under Sec. 304-B IPC i.e. dowry death should be vested with investigation and where minor school going children are named, they shall not be arrested and be sent to the court for taking cognizance and further proceedings. Their arrest ruins their future life and lower them in their self-esteem. This fact that their names also figured in the complaint lodged by the wife. In certain cases even grand parents of the husband who are in their eighties and nineties suffer this traumatic situation.

31. There is growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.

32. These ground realities have persuaded this court to recommend to the authorities and law makers to have a review of the situation and legal provision."

As will be clear from the above, the orders of the High Court of Delhi are of general nature. As is also clear from the processing of the RTI application of Sh. Kollu Durga Prasad no complete legislation has resulted there from. The information sought by appellant Sh. Kollu Durga Prasad is now in his possession, which he may use for whatever legal recourse he wishes. The mandate of the RTI Act 2005 however, stands fulfilled. We, therefore, find no merit in this appeal, which is hereby dismissed.

Reserved in the hearing, this decision is announced in the open chamber on this 28th day of April, 2009. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah) Chief Information Commissioner 28.4.2009 Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar) Joint Registrar 27.4.2009