

Rajesh Sharma and others v. State of U.P. and another

Amrasha Singh¹

“There is a need to check the tendency to rope in all family members to settle a matrimonial dispute.”²

This comment seeks to examine the controversy created by the Supreme Court post the decision in Rajesh Sharma and others v. State of UP and another about the relaxation of Section 498A Indian Penal Code, 1860. The comment delves into the issue of how the court has been going beyond its powers by issuing guidelines when it is seen as an interpreter of law. It also discusses the plight of the women and the flawed statistics that have led to such decisions by the Apex Court in the times when the fight for the rights of the female is at its peak.

¹Student, 2nd year B.A. LL.B (Hons.), National law University, Odisha (NLUO).

²Rajesh Sharma v. State of U.P., A.I.R. 2017 S.C. (India).

Introduction

Before starting, it is essential to give this case commentary in some context. The fight for the rights of the female has always been at the forefront. There are various laws which protect the female. When a female is tortured at the hands of the husband and sometimes even at the hands of his parents or thrown out of the house because the dowry did not seem enough, at that time, she does not have any option but to take the legal remedy.

Dowry Prohibition Act, 1961 was not able to protect the women and there was an alarming increase in the dowry deaths. There was assiduous campaigning by women's rights activists against 'marital cruelty'. After an uphill battle, Section 498A was introduced in the Indian Penal Code (IPC) in 1983. The section calls for a maximum of 3 years of punishment with fine. It also states that if he or any of his relatives harass her for the demand of dowry this would come under 'cruelty' and would be liable for the punishment. People fighting for male rights claim that the law is being 'misused' and they have concluded that from the low conviction rate. The reality, in fact, is that the victim is pressurized to take back the case, prosecution not showing interest, etc.

The stance of the Supreme Court

After years, by various judgments, and various interpretations, the meaning of this section is mitigated. The law has been diluted to a great extent. The recent judgment in the case of Rajesh Sharma and others v. State of UP and another, the guidelines issued by the Apex Court for the accused has made it easier for the accused even more. There are previous other judgments by High Courts which talk about the rights of the accused and the same have even been discussed in the judgment.

Facts

A case of harassment for dowry was filed by the victim. It was alleged that, at the marriage, her father gave dowry as was in his capacity. But the accused were not satisfied and they started to abuse her. They made a demand of Rs. 3,00,000 and a car which the complainant's father couldn't fulfill. Later, the husband dropped her at her house. She was pregnant then. After sometime, suffered pain and her pregnancy got terminated. She further added that her stridhan was retained.

On the basis of the complaint, the appellant no. 1, the husband was summoned under Section 498A and 323 IPC. The other accused, appellant no.2 to 5 (unmarried sister and brother, parents) were not summoned. The lower court held from the facts that others were not involved. So, the complainant filed a revision appeal in the court of Additional Sessions

Judge, Jaunpur that appellant no. 2 to 5 should also be summoned. The court decided to take a fresh decision on the matter. The accused went to the High Court against the order of summoning. The court ordered mediation. It failed and the court ruled that there was no reason to reverse the order of the trial court. So, an appeal was filed in the Supreme Court.

Decision

The Supreme Court issued 8 guidelines. Previously, certain guidelines were laid down by the Madras High Court after a petition was filed by Tr. Romiah. It held that apart from husband, various family members are implicated and the police harass them. The magistrates accede to the requests of the police without verifying the state of affairs. Thus, purpose of legislation gets defeated. The ultimate object of every legal system is to punish the guilty and to protect the innocents. The Delhi High Court, in the case of ChanderBhan v. State³ ruled that there should be prior approval of DSP before filing the case. If there is a strong allegation of physical and mental cruelty then the case should be filed. Filing of complaint should act like the last resort. There should be well behaved female constables in crime against women cells. The Supreme Court, in the case of Arnesh Kumar v. State of Bihar⁴, held that the arrest of the accused should be only after all the parameters are fulfilled given under Section 41 CrPC. The magistrates should check that the parameters have been fulfilled and then they should authorize the detention.

In this case, the Apex Court held that;

At least one Family Welfare Committee must be constituted in each district by the District Legal Services Authority (DLSA), which is chaired by the District Judge. It may consist of paralegal volunteers, social workers, etc. Any complaint under 498A IPC would be forwarded to the committee by the magistrate or the police officer and the committee will have to communicate them. The committee would have to send a report within one month of the complaint. It should give its opinion on the case and until the committee submits the report, no arrest shall be made. The report then shall be considered by the Magistrate or the police officer. Complaints under the Section should be investigated by a Designated Officer of the area. If a settlement is reached by the parties, then the District Judge or the officer appointed can dispose of the proceedings. The bail application should be decided on the same day. Mere recovery of the alleged dowry items shouldn't be a ground of denial of the bail. If the persons who are accused in the case, do not reside in India, confiscation of the passport or issuance of Red Corner notice shouldn't be the first step taken. The personal appearance of all the family

³ChanderBhan v. State, (2008) DLT 691 (India).

⁴Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 (India).

members isn't compulsory. The trial court may grant exemption or attendance by video conferencing.

The court passed an order that the trial court should pass an order in light of these guidelines.

Analysis

The court in its judgement went beyond its limits by issuing the guidelines. The function of the Supreme Court is to interpret the law and not to issue guidelines. It breached its boundaries as it did in the case of Vishaka v.State of Rajasthan⁵. A bench of Supreme Court judges has recently observed, "We can't write law. We can only interpret the law."

Low Conviction Rate

The court cited the statistics from the Criminal Records Bureau (CRB) that at the start of 2013, 4, 66,079 were pending. Out of which, only 7, 258 were convicted and 38,165 were acquitted and 8,218 were withdrawn. In 2012, 1,97,762 arrests were made. Charge sheets were filed in 93.6% of the cases and convictions were only in 14.4%. In 2009, 89,546 cases in which 1,74,395 arrests were made and 8,352 were declared false on the basis of mistake of fact or law. The statistics do not show the real picture. There are many other reasons for the low conviction rate. The FIR is not written properly. They are so written that they weaken the case of the victim. The investigation is not proper. The investigators are so careless that sometimes they miss vital pieces of information, things that make or break a case. There is constant pressure on the victim to take her case back. She is pressurized from everyone including her parents, accused and the Investigating Officer. Everyone tries to persuade her into a settlement. With all these circumstances, there are low chances of conviction. The point of allowing the accused for the trial to be done through video conferencing is also raised. This is making everything easier for them. They do not have to go to the court and their work is done.

Meaning of the term 'misuse'

The Court has over-simplified the term 'misuse'. It says that the women misuse the law a lot to implicate the husband, his relatives, his aged parents. This is not true. In most cases, the parents are also involved in harassing the woman for dowry. There is no misuse of the law but it is being looked at in such a way with the flawed statistics that it seems to the courts that it is being misused.

Conclusion

⁵Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

The guidelines issued have a negative impact on the society. The women will now have to fight even more to get their complaints registered. While they will be running from pillar to post, her husband would be able to get tried through video conferencing. He can easily get bailed and as a result, there would be more harassment of the women and more opportunities to force her to withdraw her complaint. This is a worrying situation because it can go beyond its limits in the future too through its judgements. For now, the judgement of this case has been just another addition to the plight of the women.