

Rajesh Sharma &Ors.Versus State of U.P. &Anr.

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Abstract

The Supreme Court of India in *Rajesh Sharma &Ors.v. State of U.P. &Anr.*, has provided arrest guidelines in cases under Section 498A of the Indian Penal Code. While some view this as a positive step towards preventing unnecessary arrests under the section, the judgment has been criticized by many for ignoring the victim's side of the equation. What follows is a critical analysis of the said judgment from a socio-legal perspective.

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Introduction

On July 27, 2017, the Supreme Court of India delivered a judgment that changed the procedural aspect of Section 498A of the Indian Penal Code, in *Rajesh Sharma &Ors. v. State of U.P. &Anr.*² The judgment effectively prohibited the arrest of accused persons in cases of Section 498A. It ordered the establishment of Family Welfare Committees in each district, and provided that “Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee”. The committee must submit its report within a month from the date of receipt of such complaint, and no arrest should be affected until such report is received.

The two-judge bench, consisting of Justice Adarsh Kumar Goel and Justice UdayUmeshLalit, asserted that there was substantial misuse of the provision of Section 498A which often led to unnecessary arrest and harassment of family members of the accused husband. The guidelines in the judgment were issued to curb such arrests. The Court directed the District Legal Services Authorities to provide training to the members of such committees and review their functioning.

Background

In the decade of 1980, dowry deaths rose at an alarming rate in India. To facilitate rapid intervention by the state and protect young women who were unable to meet the unlawful demands of their in-laws, the Indian Penal Code (I.P.C.), 1860, was amended by way of the Criminal Law (2nd Amendment) Act, 1983, and the new section 498A under Chapter XX-A, “Of Cruelty By Husband Or Relatives Of Husband”, was inserted on the 26th of December, 1983. The amendment focused on dowry deaths and cases of cruelty towards married women by their in-laws. Subsequent amendments were made in the Code of Criminal Procedure (Cr.P.C.), 1973, and the Indian Evidence Act, 1872, by the same amendment to solidify this provision.

Analysis

The judgment starts with a summary of the facts of the case. It cites part of the judgment delivered by the trial court which states the court’s conviction that the accused husband Rajesh Sharma had demanded a car and three lacs rupees in the form of dowry. It appeared to the court that he had tortured the complainant and retained her stridhan. Since the trial court did not deem the summoning of appellants’ no. 2 to 5 i.e. the father, mother, brother and sister of appellant no. 1, Rajesh Sharma, to be required, respondent no. 2 i.e. the original

²Criminal Appeal No. 1265 of 2017.

complainant, preferred a revision petition and submitted that appellants no. 2 to 5 should also have been summoned. When the trial court was directed to take a fresh decision in the matter, an appeal was preferred before the High Court as per Section 482 of Cr.P.C. by the appellants. On failure of mediation, the High Court deemed it unnecessary to interfere with the order of summoning, as a result of which, said appeal was preferred.

The Supreme Court referred to statistics by the National Crime Records Bureau (NCRB) to ascertain how many cases reported under Section 498A were later declared false on account of mistake of fact or law. It also referred to the low conviction rate of 15.6% in such cases. Referring to *Sushil Kumar Sharma v. Union of India*,³*Preeti Gupta v. State of Jharkhand*,⁴*Ramgopal v. State of Madhya Pradesh*,⁵*Savitri Devi v. Ramesh Chand*⁶etc, it submitted that misuse of the provision is judicially acknowledged. It quoted various guidelines provided by different courts in cases of arrest under Section 498A, such as *ChanderBhan v. State*⁷ and *Arnesh Kumar v. State of Bihar*.⁸ The Court acknowledged the contrasting arguments provided by both sides and referred to the object behind insertion of Section 498A in the IPC. In pursuance of its conviction that relatives of the accused husband should not be wrongfully arrested, the Court issued a set of guidelines.

The primary question regarding the case is as to how appropriate the judgment in question was. Said judgment is erroneous to the extent that it warrants the possibility of excess of judicial power. In trying to defend innocent relatives of the accused husband, the Court has provided protection from arrest to the accused husbands as well. As a result of this, there will be no arrests of accused persons under Section 498A, thus rendering the protective nature of the provision completely ineffective.

This decision is in dire contradiction with the existing statute of I.P.C. Though the reasoning provided by the court was consistent with the cases cited in the judgment, it failed to appreciate the very object of insertion of Section 498A i.e. to protect the complainant from further harassment until a solution is reached. Said decision has provided for the constitution of Family Welfare Committees and invested them with massive powers by making their report a prerequisite for arrest, if arrest is to be made at all. The decision will adversely affect genuine complaints made under Section 498A by delaying arrests and thus risking the safety of many a complainant.

³(2005) 6 SCC 281.

⁴(2010) 7 SCC 667.

⁵(2010) 13 SCC 540.

⁶ILR (2003) I Delhi 484.

⁷(2008) 151 DLT 691.

⁸(2014) 8 SCC 273.

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The analysis made by the Court of the National Crime Records Bureau data is questionable as well. According to said NCRB statistics, in 2005, 10.56% of cases registered under Section 498A were later declared false on account of mistake of fact or law. The same was reduced to 9.32% in 2009, as per the NCRB. The Court also mentioned the low conviction rate in cases of Section 498A. An argument can be made that the overall conviction rate in India is significantly poor as a whole for every type of crime, not just for offences under Section 498A. Thus a low conviction rate should not necessarily be interpreted as misuse of said law. The higher acquittal rate may also result from inadequate investigation, benefit of doubt given to the accused, reconciliation between the spouses, etc.

Furthermore, the judgment started out by suggesting that the guidelines would be meant to prevent arrest of innocent, aged, and non-Indian residential relatives of the accused husband. This was omitted and the blanket of protection was extended to all the accused persons, the husband included. This significantly reduces the merit of the said judgment and was perceived by various organizations as “an exercise in male bonding”.

The implications of the decision can be perceived to be against women’s rights. In order to prevent misuse of Section 498A to harass unwitting relatives of the husband, the Court could have made the guidelines specifically against arrest of such persons alone. The Family Welfare Committees could have been vested with the power to investigate into the matter only as regards other accused persons and not the primary accused. By holding the primary accused i.e. the husband to the strict provisions of arrest under Section 498A, a balance could have been maintained between safeguarding the complainant’s rights and preventing false implication of the husband’s relatives into the matter by making their arrest subject to the report of the Family Welfare Committee.

Conclusion

In this case, the Court gave more impetus to the rights of the accused husband and his relatives, than those of the complainant woman. The fact exists that women have been discriminated against and continue to be so. The laws that aim to provide better legal protection to these persons against gender-specific crimes is in place for reasons well-founded. Despite of modernization and “woman development”, there has not been any significant improvement towards reducing crimes against women. Specific provisions of law such as S. 498A secure to women the right to life under Article 21 of the Constitution, and the right to equality under Article 15. Denying the required protection of law to a specific sex is discrimination in one of its basest forms.

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Possible misuse is an unfortunate but common after-effect of the enforcement of a law. Numerous provisions of law are abused to harass innocent people, S. 498A not being an exception. However, the amount of its misuse is not so significant that it can dwarf the positive change it has brought into society. The guidelines issued in the present judgment will serve as mere hindrances to the proper implementation of Section 498A. Women's rights activists and legal minds all over the country eagerly await the judicial review of this judgment by the Supreme Court of India.