COMPOUNDABILITY OF CASES UNDER SEC. 498A OF INDIAN PENAL CODE, 1860

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"Most people who meet my wife quickly conclude that she is remarkable. They are right about this. She is smart, funny and thoroughly charming. Often, after hearing her speak at some function or working with her on a project, people will approach me and say something to the effect of, you know, I think the world of you, Barack, but your wife, wow!" -

Barack Obama, The Audacity of Hope

These intriguing lines from the autobiography of one of the world's most powerful man may reflect a warm conjugal relationship between the couple. But life is not always a soft bed of roses for every married couple. The daily tiffs, wear and tear of married life at times may take a toll on the spouses leading to trouble in paradise. Talking of the present scenario, umpteen complaints of cruelty and harsh treatment by the husband against the wife are filed in courts with a view to seek redressal under section 498A of the Indian Penal Code, 1860.

Section 498-A IPC, comprising of an independent chapter was inserted by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983) with effect from 25th December, 1983. Traditionally, in any society, the woman is subservient and is subjugated to the whims and caprices of the man especially in the relationship between husband and wife. Life for woman in the family of the husband is sometime so miserable and intolerable that the drudgery is some time put to an end by suicide. In such an event, the guilty escaped punishment for want of an adequate provision for punishment. Conscience of the modern society violently reacted to this lacuna in the law and Chapter XX-A in the Indian Penal Code, 1860, was inserted to extend protection to the weaker spouse. However, in view of the seriousness of the offence it was made non-compoundable.

The moot question that demands a considerable judicial-stirring is when once the Legislature thought it fit to make the offence under Section

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498-A as non-compoundable, whether under Section 482 of the Code of Criminal Procedure, the High Court has got inherent power to permit the parties to compound such offence.

It may be noted that even under the Hindu Marriage Act where the parties made serious allegations of adultery, and cruelty etc., the legislature still thought it fit to introduce a clause to the effect, that the Court before the commencement of the trial, has to make an attempt for reconciliation. If that reconciliation ended in fruitful success of making the parties re-united, the concerned Judge would not proceed with the matter further. In the same breath, when serious allegations are made in a complaint which made the Court to take cognizance of the same, can we say that the Court can continue the proceedings involving non-compoundable offence even after the parties (husband and wife) compromised the matter voluntarily and filed an application for permission to compound the offence? Whether it is necessary to drive them to go through the time consuming and costly process is one pertinent question.

The very object of section 498-A IPC should not be allowed to become counter-productive. In matters relating to family life and marital relationship, the advantages that follow from allowing the discontinuance of legal proceedings to give effect to a compromise or reconciliation would outweigh the degree of social harm that may be caused by non-prosecution. If the proceedings are allowed to go on despite the compromise arrived at by both sides, either there will be little scope for conviction or the life of the victim would become more miserable. In what way the social good is achieved thereby? The sensitivity of a family dispute and the individual facts and circumstances cannot be ignored.

An argument against compoundability is that the permission to compound would amount to legal recognition of violence against women and that the factum of reconciliation cannot be a justifiable ground to legally condone the violence. The acceptance of such an argument would imply that the priority of law should be to take the criminal proceedings to their logical end and to inflict punishment on the husband irrespective of the mutual desire to patch up the differences. It means - reconciliation or no reconciliation, the husband should not be spared of the impending prosecution and the punishment, if any; and then only Section 498A would achieve its objective. I do not think that the objective of Section 498A will

be better achieved by allowing the prosecution to take its own course without regard to the rapprochement that has taken place between the couple in conflict. A balanced and holistic approach is called for in handling a sensitive issue affecting the family and social relations. The emphasis should not be merely on the punitive aspect of the law. In matters of this nature, the law should not come in the way of genuine reconciliation or revival of harmonious relations between the husband and estranged wife.

The other argument which is put forward against compounding is that hapless women especially those who are not much educated and who do not have independent means of livelihood, may be pressurized and coerced to withdraw the proceeding and the victim woman will be left with no option but to purchase peace though her grievance remains unsolved. However, this argument may not be very substantial. The same argument can be put forward in respect of compoundable offences wherever the victims are women. The safeguard of Court's permission would, by and large, be a sufficient check against the possible tactics that may be adopted by the husband and his relations/friends. The function of the Court in this matter is not a mere formality. The Judicial Magistrate or Family Court Judge is expected to be extra-cautious and play an active role.

The Law Commission of India in its 154th report (1996) recommended inclusion of S. 498A in the Table appended to Section 320(2) so that it can be compounded with the permission of the Court. The recommendation of the Law Commission in the 154th Report regarding Section 498A was reiterated in the 177th Report (2001). Further, Justice Malimath Committee's Report on Reforms of Criminal Justice System strongly supported the plea to make Section 498-A IPC, a compoundable offence.

The Ministry of Home Affairs in its 111th Report on the Criminal Law (Amendment) Bill 2003 (August 2005), observed thus: *"It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence u/s 498A IPC, a compoundable one by inserting this Section in the Table under sub-section(2) of Section 320 of CrPC"*. The 128th Report of the Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006 reiterated the recommendation made in the 111th Report.

In continuation of what was said in the 154th Report, the Apex court, in the case of **B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 ("B.S. Joshi")**, has firmly laid down the proposition that in order to subserve the ends of justice, the inherent power under Section 482 CrPC can be exercised by the High Court to quash the criminal proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony.

The correctness of the aforesaid decision was however doubted by a Division Bench of the Hon'ble Supreme Court of India in the matter of **Gian Singh v. State of Punjab & Anr., 2010 (12) SCALE 461**. Hence, the matter was referred to a larger bench. The question before the larger bench (comprising of Hon'ble Justice Lodha, Hon'ble Justice Dave and Hon'ble Justive S.J. Mukhopadhyay) concerned the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable Under Section 320 of the CrPC.

It was held, eventually, in **Gian Singh v. State of Punjab, (2012) 9 SCALE 257** that, "the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. …The High Court may quash criminal proceedings pertaining to offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

The Hon'ble Supreme Court has, in the recently concluded matter of **K. Srinivas Rao v. D.A. Deepa (Civil Appeal No. 1794 of 2013 arising out of Special Leave Petition (Civil) No. 4782 of 2007)**, held, following Gian Singh, that a High Court may quash the criminal

proceedings intitated in pursuance of an FIR alleging the commission of an offence described in Section 498A of the IPC, irrespective of the fact that such an offence in non-compoundable, if the parties reach an amicable settlement..

Realizing the importance of settlements in such disputes of "predominant civil flavour" - the Hon'ble Supreme Court directed that the criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. It will be for the concerned court to work out the modalities taking into consideration the facts of each case;

A Full Bench of the Hon'ble Supreme Court of India, in the recent judgment of **Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr. (Criminal Appeal No. 447 of 2013 arising out of S.L.P. (CRL.) No. 6462 of 2012),** has again affirmed B.S. Joshi and has held that, "High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code.

To conclude, a serious re-look of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

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