

പതിമൂന്നാം കേരള നിയമസഭ
എട്ടാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ: 1899

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ഗാർഹിക പീഡനത്തിനെതിരെ നടപടി

ചോദ്യം

മറുപടി

ശ്രീ. സാജു പോൾ

ശ്രീ. തിരുവഞ്ചൂർ രാധാകൃഷ്ണൻ
ആഭ്യന്തരവും വിജിലൻസും വകുപ്പുമന്ത്രി

(എ) വിവാഹിതനായ ഒരു പൗരൻ വിവാഹേതര ബന്ധത്തിലേർപ്പെടുന്നതും തുടർച്ചയായി ഭാര്യയെ ഗാർഹിക പീഡനത്തിനിരയാക്കുന്നതും എന്തെല്ലാം നിയമങ്ങളുടെയും നിയമവ്യവസ്ഥകളുടെയും ലംഘനമാണെന്ന് വെളിപ്പെടുത്താമോ;


(എ) ഇത് സംബന്ധിച്ച് ഇൻഡ്യൻ ശിക്ഷാ നിയമത്തിൽ പ്രതിപാദിക്കുന്ന പ്രസക്ത ഭാഗങ്ങളുടെ പകർപ്പ് അനുബന്ധമായി ചേർത്തിരിക്കുന്നു.

(ബി) ഇത്തരം കുറ്റങ്ങൾ സംസ്ഥാനത്തെ ഒരു മന്ത്രിക്കെതിരെ സ്വന്തം ഭാര്യ ഉന്നയിക്കുകയും മുഖ്യമന്ത്രിയെ നേരിൽകണ്ട് പരാതിപ്പെടുകയും പത്ര ദൃശ്യ മാദ്ധ്യമങ്ങളും സംസ്ഥാനത്തെ മന്ത്രി പദവിയിലുള്ള ഗവ. ചീഫ് വിപിം ഓട്ടോ കാര്യങ്ങൾ വെളിപ്പെടുത്തിയതും ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ;

(ബി) } ഇത് സംബന്ധിച്ച് ആഭ്യന്തര വകുപ്പിൽ പരാതിയൊന്നും ലഭിച്ചതായി വരെ } കാണുന്നില്ല.

(സി) മന്ത്രിയുടെ പരസ്ട്രീ ബന്ധവും ഭാര്യപീഡനവും സംബന്ധിച്ച തെളിവുകളുടെ സി.ഡി ഉൾപ്പെടെ തന്റെ പക്കലുണ്ടെന്ന ഗവ. ചീഫ് വിപിന്റെ പരസ്യപ്രസ്താവനശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ;

(ഡി) ഇതിനെ തുടർന്ന് പോലീസ് സ്വീകരിച്ച നടപടി എന്താണെന്ന് വെളിപ്പെടുത്താമോ; കേസ് രജിസ്റ്റർ ചെയ്തിട്ടുണ്ടോ?


സെക്ഷൻ ഓഫീസർ

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

This clause defines the expression “domestic violence”. Any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the clause. In determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be a guiding factor. (*Notes on Clauses*).

CHAPTER III POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.—(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

This clause seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed, such person may inform the Protection Officer. It also lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information. (*Notes on Clauses*).

5. Duties of police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498-A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

This clause lays down the duties of a police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the proposed legislation, the availability of services of service providers and Protection Officers, her right to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under section 498-A of the Indian Penal Code, wherever relevant. It is also envisaged that this clause shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence (*Notes on Clauses*).

the Magistrate. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice. (Notes on Clauses).

14. Counselling.—(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

This clause empowers the Magistrate to direct at any stage of the proceedings, the respondent or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider. The member of the service provide providing the counselling shall possess such qualifications and experience as may be laid down by the Central Government, by rules. Where any counselling has been ordered under this clause, the Magistrate shall fix the next date of hearing of the case within a period not exceeding two months. (Notes on Clauses).

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

This clause stipulates that the Magistrate may secure the services of a suitable person preferably a woman whether related to the aggrieved person or not, including a person engaged in promoting family welfare for the purposes of assisting the Court in the discharge of its functions. (Notes on Clauses).

16. Proceedings to be held *in camera*.—If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act *in camera*.

This clause provides for proceedings to held *in camera* at the discretion of the Magistrate or if either party to the proceedings so desires. (Notes on Clauses).

17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

This clause lays down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law. (Notes on Clauses).

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

This clause provides that the Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her *stridhan* or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order. (Notes on Clauses).

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

CHAPTER V
MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

This clause seeks to provide that the Protection Officer and members of service providers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code while acting or purporting to act under any of the provisions of the proposed legislation or the rules or orders made thereunder. (*Notes on Clauses*).

31. Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

This clause provides that a breach of protection order or an interim protection order by the respondent shall be an offence under the proposed legislation punishable with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Sub-clause (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who had passed the order which is alleged to have been breached. Sub-clause (3) provides that the Magistrate, while framing charges regarding breach of order, may also frame charges under section 498-A or any other provision of the Indian Penal Code or the Dowry Prohibition Act, 1961 in case the facts disclose the commission of any offence under those provisions. (*Notes on Clauses*).

32. Cognizance and proof.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the Court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

This clause lays down that the offence of breach of protection order by the respondent shall be a cognizable and non-payable offence and the Court may conclude that the offence has been committed on the sole testimony of the aggrieved person. (*Notes on Clauses*).

33. Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

Form of charge under section 496

I,.....(name and office of the Magistrate, etc.), hereby charge you.....(name of the accused) as follows:

That you, on or about the.....day of....., at....., dishonestly (or fraudulently) went through the ceremony of being married to AB knowing that you were not thereby lawfully married, and thereby committed an offence punishable under section 496, I.P.Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charge.

✓ **497. Adultery.**—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punishable with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Classification of Offence.—The offence under this section is non-cognizable, bailable, compoundable and triable by Magistrate of the first class.

State Amendment—[Andhra Pradesh].—In Andhra Pradesh, offence under section 497 is cognizable, non-bailable and triable by the Magistrate of the first class.—Andhra Pradesh Act 3 of 1992, section 2 (w.e.f. 15-2-1992).

Form of charge under section 497

I,.....(name and office of the Magistrate, etc.), hereby charge you.....(name of the accused) as follows:

That you, on or about the.....day of....., at....., had sexual intercourse with AB, wife of CD, whom you knew (or had reason to believe) to be the lawfully wedded wife of CD, and that you did so without the consent or connivance of the husband, and that you have thereby committed an offence punishable under section 497, I.P.Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charge.

COMMENTS

Adultery.—The offence of adultery is punishable under S. 497, I.P.Code. S. 497, I.P.Code has three features, namely, (1) it does not confer upon the wife to prosecute the woman with whom the husband has committed the adultery; (2) it does not confer upon the wife any right to prosecute the husband for committing adultery; and (3) it does not make an act of husband's having sexual relation with an unmarried woman an offence. The section is not *ultra vires* the Constitution: *Sowmithri Vishnu v. Union of India* A.I.R. 1985 S.C. 1618; 1985 Cr.L.J. 1302; *V. Revathi v. Union of India* A.I.R. 1988 S.C. 835; 1988 Cr.L.J. 921.

498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Classification of Offence.—The offence under this section is non-cognizable, bailable, compoundable and triable by any Magistrate.

Form of charge under section 498

I,.....(name and office of the Magistrate, etc.), hereby charge you.....(name of the accused) as follows:

That you, on or about the.....day of....., at....., took away (or enticed or concealed or detained) AB, wife of CD, who you then knew (or had reason to believe) to be the

wife of CD, from CD or EF who had the care of the said AB on behalf of CD, with intent that said AB may have illicit intercourse with some person.....(give the name, if available), and that you have thereby committed an offence punishable under section 498, I.P.Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charge.

13[CHAPTER XX-A

OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

✓ 498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Classification of Offence.—The offence under this section is cognizable if information relating to the commission of offence is given to an officer in charge of a police station by the aggrieved person or by any person related to her by blood, marriage or adoption or if there is no such relative, or by any public servant belonging to such class or category as may be notified by the State Government in this behalf, non-bailable, non-compoundable and triable by Magistrate of the first class.

State Amendment—[Andhra Pradesh].—In Andhra Pradesh, offence is compoundable.

COMMENTS

Object of introducing Chapter XX-A.—There is no doubt that the object of introducing Chapter XX-A containing S. 498-A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. S. 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of I.P.Code: *B.S. Joshi v. State of Haryana* 2003 Cr.L.J. 2028 (S.C.).

Cruelty against married woman by husband or his relatives.—In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under S. 498-A and not de hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under S. 498-A. The legislative intent is clear enough to indicate in particular reference to *Explanation (b)* that there shall have to be a series of acts in order to be a harassment within the meaning of *Explanation (b)*. The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of S. 498-A against the accused. Acquittal of a charge under S. 306, though not by itself a ground for acquittal under S. 498-A, but some cogent evidence is required to bring home the charge of S. 498-A as well, without which the charge cannot be said to be maintained: *Girdhar Shankar Tawade v State of Maharashtra* A.I.R. 2002 S.C. 2078: (2002) 5 S.C.C. 177; J.T. (2002) 4 S.C. 357; 2002 Cr.L.J. 2814.

13. Chap. XX-A inserted by Act 46 of 1983, S. 2 (w.e.f. 25-12-1983).