**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRMP No. 711 of 2022**

Order reserved on : 01.12.2023

Order delivered on : 18.01.2024

1. Suman Sharma, W/o. Subhash Sharma, Aged About 57 Years, R/o. HIG C-109/A, Shailendra Nagar, Police Station City Kotwali, Raipur, District Raipur, Chhattisgarh.
2. Soumya Sharma, W/o. Vidit Sharma, Aged About 30 Years, R/o. 604, B Block, Wallfort City, Bhathagaon, Raipur, District Raipur, Chhattisgarh
3. Vidit Sharma, S/o. Subhash Sharma, Aged About 32 Years, R/o. 604, B Block , Wallfort City, Bhathagaon, Raipur, District Raipur, Chhattisgarh

**--- Petitioners**

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**Versus**

1. State Of Chhattisgarh, Through Police Station Mahila Thana, Raipur, District Raipur, Chhattisgarh
2. Superintendent Of Police Raipur, District Raipur, Chhattisgarh.
3. Subhashini Sharma Alias Saniya, D/o. Mohammad Mustaq, Aged About 29 Years, R/o. House No. B-5, Ashoka Park, Shankarnagar, Raipur, District Raipur, Chhattisgarh.

**---- Respondents**

(Cause title taken from Case Information System)

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For Petitioners : Mr. Sabyasachi Bhaduri & Mr. Khulesh Sahu, Advocates

For Respondent No.1 & 2 : Mr. Ashish Tiwari, Govt. Advocate

For Respondent No.3. : Mr. Malay Shrivastava, Advocate

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**(Division Bench)**
**Hon'ble Shri Justice Sanjay K. Agrawal &**
**Hon'ble Shri Justice Sachin Singh Rajput**

**C.A.V. Judgment**

**Sanjay K. Agrawal, J.**

1. Finding conflict with two judgments rendered by the three Judges Bench of the Supreme Court in the matters of ***Shivcharan Lal Verma & Another v. State of Madhya Pradesh***[1] and ***Rajinder Singh v. State of Punjab***[2], the learned Single Judge has referred the matter to the Division Bench on the following stated question :

> *"Whether the complaint/FIR lodged by the second wife for commission of offence punishable under Section 498-A of the I.P.C. would be tenable or not ?"*

2. In turn, the Hon'ble Chief Justice has referred the matter to us for answering the aforesaid question formulated by the learned Single Judge and this is how the matter has been placed before us. The afore-stated question arises in the following factual backdrop.

3. The complainant/respondent No.3 lodged written complaint against one Subhash Sharma and present

1 (2007) 15 SCC 369
2 (2015) 6 SCC 477

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petitioners alleging that she was married to co-accused Subhash Sharma on 19.07.2018 and it is further allegation of the complainant that the co-accused Subhash Sharma was already married to the petitioner No.1 herein and immediately after her marriage, the petitioners and co-accused Subhash Sharma started harassing her and treating her with cruelty leading to filing of the written complaint, which was registered on 13.09.2021 for offence under Section 498-A read with Section 34 of I.P.C. against the petitioners and one Subhash Sharma vide Annexure P-2, which is sought to be quashed by the petitioners herein by filing the present petition under Section 482 Cr.P.C.

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4. In the present petition, during the course of hearing, the learned Single Judge finding conflict with the decision rendered in the matter of ***Shivcharan Lal Verma*** (supra) and ***Rajinder Singh*** (supra) has referred the matter to Hon'ble the Chief Justice for answering the above-stated question.

5. It is not in dispute that the offence that has been registered against the present petitioners and against Subhash Sharma only Section 498-A read with

Section 34 of I.P.C. Section 498-A of I.P.C. states as under :-

> "**498A. 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."

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6. The Supreme Court in the matter of ***Shivcharan Lal Verma*** (supra) has considered the question as to whether the offence under Section 498-A of I.P.C. would attract when the marriage of the appellant therein with the deceased Mohini (second wife) is null and void, as it has been performed by appellant therein during the lifetime of his first wife, which their Lordships answered holding that since the alleged

marriage of the appellant therein with Mohini during the subsistence of a valid marriage with Kalindi is null and void and consequently, proceeded to set aside the conviction of appellant therein for offence under Section 498-A of I.P.C. and held as under :-

> "1. This appeal is by the two appellants who have been convicted under Sections 306 and 498A IPC by the learned Sessions Judge and have been sentenced to imprisonment for seven years for conviction under Section 306 and three years for conviction under Section 498A. The prosecution alleged that during the lifetime of the first wife Kalindi, Shiv Charan married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result of which she ultimately committed suicide by burning herself. The incident occurred inside the house of Shiv Charan while Kalindi and Shiv Charan were in one room and Mohini was in some other room. The learned Sessions Judge on appreciation of evidence of PWs 1, 2 and 3 came to the conclusion that prosecution has been able to prove both the charges against both Kalindi and Shiv Charan beyond reasonable doubt and convicted both as already said. On appeal, the High Court re-appreciated the evidence and affirmed the conviction and sentence and hence, the present appeal by way of grant of special leave.
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> 2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 IPC to be unconstitutional was under re-consideration by the Constitution Bench.

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The Constitution Bench finally disposed of the matter in Criminal Appeal No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid Constitution Bench decision, two questions arise for consideration in this appeal. One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, make it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned Sessions Judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not

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> find any infirmity with the conviction of the appellants under Section 306 of the IPC. So far as the sentence is concerned, they have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case, we reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled and they must surrender to undergo the remaining period of sentence."

7. The principles of law laid down in ***Shivcharan Lal Verma*** (supra) has been followed recently by the Supreme Court in ***P.Sivakumar & Ors. v. State Represented By The Deputy Superintendent of Police Etc.***[3] and it has been held that when the marriage has been found to be null and void, the conviction under Section 498-A of I.P.C. would not be sustainable following the principles of law laid down in ***Shivcharan Lal Verma*** (supra).

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8. The two Judges Bench of Supreme Court in the matter of ***Reema Aggarwal v. Anupam & Others***[4] has considered the question as to who would be covered by the expression "husband" for attracting Section 498-A of I.P.C. and held that the husband contracting second marriage during the subsistence of earlier marriage can be charged under Section 304-

3 2023 LiveLaw (SC) 116
4 (2004) 3 SCC 199

B and Section 498-A of I.P.C. and observed in para 18 as under :-

> “18. The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue, further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304-B IPC and Section 113-B of the Indian Evidence Act, 1872 (for short “the 'Evidence Act') were introduced, cannot be lost sight of. Legislation enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper-technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take shelter behind a smokescreen to contend that since there was no valid marriage, the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear

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from the fact that it is not only the husband but also his relations who are covered by Section 498-A. The legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions - Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such

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> woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

9. Thereafter, in the matter of ***Rajinder Singh*** (supra), ***Reema Aggarwal*** (supra) was considered by three judges Bench of the Supreme Court with reference to Section 2 of the Dowry Prohibition Act and held in para 19 as under :-

> "19. In *Reema Aggarwal v. Anupam* (supra) in construing the provisions of the Dowry Prohibition Act, in the context of Section 498-A, this Court applied the mischief rule made immortal by *Heydon's case [(1584) 3 Co Rep 7a : 76 ER 637]* and followed Lord Denning's judgment in *Seaford Court Estates Ltd. v. Asher [(1949( 2 KB 481 : (1949) 2 All ER 155 (CA)]*, where the learned Law Lord held: (*Seaford Court Estates Ltd. case*, KB p.499)
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> > "....He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature." *(Reema Aggarwal case SCC p. 213, para 25)*
>
> The Court gave an expansive meaning to the word `husband' occurring in Section

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498-A to include persons who entered into a relationship with a woman even by feigning to be a husband. The Court held: *(Reema Aggarwal case* SCC P.210, para 18)

> "18....It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions- Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislation introducing those provisions."

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10. The Supreme Court in ***Rajinder Singh*** (supra) considering the meaning of Section 2 of the Dowry Prohibition Act referred the judgment of ***Reema Aggarwal*** (supra) in para 19 and observed in para 20 as under :

> “20. Given that the statute with which we are dealing must be given a fair, pragmatic,

> and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in *Appasaheb's case (2007) 9 SCC 721* followed by the judgment of *Vipin Jaiswal (2013) 3 SCC 684* do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.

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11. In ***Shivcharan Lal Verma*** (supra), three Judges Bench of the Supreme Court has clearly held that marriage of the appellant therein with Mohini, second wife, during the subsistence of a valid marriage with Kalindi, first wife, is null and void and consequently quashed the conviction of the appellant therein for Section 498-A of I.P.C. Whereas in ***Reema Aggarwal*** (supra) which is two Judges Bench of the Supreme Court, the principles of law laid down in ***Shivcharan Lal Verma*** (supra) was not noticed and it has been held that absence of a definition of “husband” to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as

"husband" is no ground to exclude them from the purview of Section 304-B or 498-A I.P.C. Since ***Shivcharan Lal Verma*** (supra) is the three judge bench judgment, the principles of law laid down by the three judges Bench of the Supreme Court in the matter of ***Shivcharan Lal Verma*** (supra) would prevail over the two judges Bench of the Supreme Court in ***Reema Agrawal*** (supra).

12. The issue which fell for consideration before the Hon'ble Supreme Court in ***Rajinder Singh*** (supra) was with regard to applicability of Section 2 of the Dowry Prohibition Act, 1961. The said case did not deal with the issue as to whether prosecution under Section 498A of I.P.C. is maintainable at the instance of the second wife. The said issue was emphatically answered by their Lordships of the Supreme Court in ***Shivcharan Lal Verma*** (supra), wherein it was held that the second marriage being null and void, the second wife cannot seek protection and initiate prosecution for commission of offence under Section 498A of I.P.C. The judgment delivered by ***Shivcharan Lal Verma*** (supra) was by a bench of three judges which answered the said issue. However, in ***Rajinder Singh*** (supra), the Hon'ble Supreme Court referred to

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the judgment of ***Reema Aggarwal*** (supra) where certain observations were made with regard to the provisions contained under the Dowry Prohibition Act, 1961 with regard to the meaning of 'marriage'. The term 'marriage' under the Dowry Prohibition Act, 1961 was given a wider interpretation so as to include even a proposed marriage that may not have taken place in reality. It was therefore that certain observations were made by the their Lordships of Supreme Court, but then the said observations cannot be applied as principle applicable when examining the issue as to whether prosecution under Section 498A of I.P.C. is maintainable at the instance of the second wife. As such, in our considered opinion there is absolutely no apparent conflict between two-three judges bench judgment of the Supreme Court in ***Shivcharan Lal Verma*** (supra) and ***Rajinder Singh*** (supra).

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13. Furthermore, the Supreme Court recently in the matter of ***Union Territory of Ladakh & Others v. Jammu & Kashmir National Conference & Another***[5] has made the legal position clear relying upon Constitution Bench judgment of the Supreme Court in ***National Insurance Company Limited v.***

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***Pranay Sethi***[6] by holding that when there is conflicting judgments by Benches of equal strength of the Court, it is the earlier one which is to be followed by the High Courts, and held in para 35 as under :

> "35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680*. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

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14. In view of the aforesaid discussion and legal position, we are of the considered view that there is no

6 (2017) 16 SCC 680

apparent conflict with the decision rendered by the three judges bench of Supreme Court in ***Shivcharan Lal Verma*** (supra) and ***Rajinder Singh*** (supra), however, even if, there is conflict, as it has been held by the Supreme Court in ***Union Territory of Ladakh*** (supra), it is vividly clear that when there is conflicting judgments of the Supreme Court of Benches of equal strength, it is the earlier one which is to be followed by this Court, and accordingly in the instant case ***Shivcharan Lal Verma*** (supra) has to be followed and consequently the question is answered as under: -

> The complaint or FIR lodged by second wife for commission of offence punishable under Section 498A of the IPC would not be tenable in light of principles of law laid down by their Lordships of the Supreme Court in ***Shivcharan Lal Verma & Another v. State of Madhya Pradesh***, *[(2007) 15 SCC 369].*

15. Let the matter be placed before the learned Single Judge for deciding the petition under Section 482 Cr.P.C. in light of stated question answered herein above.

Sd/-
**(Sanjay K. Agrawal)**
**Judge**

Sd/-
**(Sachin Singh Rajput)**
**Judge**

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