

Supreme Court Recalls 'Kicking Daughter-In-Law Not Cruelty' Judgment

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CJI-headed Bench allows NCW's curative petition, posts case for fresh hearing

J. Venkatesan

NEW DELHI: The Supreme Court on Thursday set aside its own judgment which held that the action of a woman merely kicking her daughter-in-law or threatening her with divorce would not come within the meaning of "cruelty" under Section 498 A of the Indian Penal Code.

A three-judge Bench of Chief Justice Altamas Kabir and Justices P. Sathasivam and G.S. Singhvi, allowing a curative petition filed by the National Commission for Women (NCW), recalled the July 27, 2009 judgment pronounced by Justices S.B. Sinha and Cyriac Joseph and directed restoration of the special leave petition (SLP) filed by Bhaskar Lal Sharma and his wife for a fresh hearing.

The Bench of Justice Sinha, allowing the SLP, had said allegations that the appellant kicked the respondent — daughter-in-law — and called her and her mother liars "may make out some other offence but not the one punishable under Section 498A of the IPC. Similarly, the allegation that the mother-in-law poi-

- Sinha Bench's 2009 judgment will have far-reaching consequences for women's rights: NCW
- Centre supports NCW stand

soned the ears of her son against his wife could not be said to be an offence punishable under Section 498A. However, if the mother-in-law took away the gifts given to the couple at the time of marriage, it would amount to a "breach of trust" as specified under Section 406 of the IPC."

Section 498-A says: "Whoever, being the husband or relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

Misuse of provision

The Sinha Bench said: "The object of this provision is prevention of the dowry menace. But many instances have come to light where the complaints are not *bona fide* and have been filed with an oblique motive. Acquittal of the accused does not in all cases wipe out the ignominy

suffered during and prior to trial."

By misusing the provision, "a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon."

In the instant matter, Monica filed cases alleging cruelty and breach of trust against her South-Africa based husband Vikas Sharma and his parents Bhaskar Lal and Vimla. Monica was Vikas' second wife. He had divorced his first wife, by whom he had two children.

On Monica filing cases under IPC Sections 498-A and 406, a Patiala trial court issued summons against her husband and in-laws. The Delhi High Court dismissed their appeal, challenging the trial court decision. An appeal directed against this order was allowed by the Bench of Justice Sinha.

Shocked at the judgment the NCW filed a review pet-

ition, which was dismissed. Against this, the curative petition was filed contending that the judgment would have far reaching consequences for women's rights all over India and needed to be corrected.

Senior counsel Indu Malhotra, appearing for the NCW, submitted before the three-judge Bench that the impugned judgment required reconsideration. Solicitor-General Mohan Parasaran, appearing for the Centre, supported the NCW stand. However, senior counsel U.U. Lalit, appearing for Monica's mother-in-law, said the NCW had no locus standi to file the curative petition.

The CJI-headed Bench held that the NCW petition was maintainable and set aside the July 2009 judgment. It ordered that fresh hearing be held by an appropriate Bench.

The CJI-headed Bench issued notice on Monica's curative petition. It, however, made it clear that the observations made in this case were confined to the curative petition and should not prejudice the outcome of the appeal.

J VENKATESAN IN THE HINDU

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