

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C. 944/2008

% Date of decision: 24.03.2008

GULSHAN KUMAR SAHNEY ...PETITIONER
Through: Ms. Neelam Grover,
Advocate.

Versus

NCT OF DELHI & ORS. ...RESPONDENTS
Through: Mr. Pawan Sharma, APP for
Respondent No. 1 / State.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J. (Oral)

1. A marriage was solemnized between late Manisha,
daughter of the petitioner, to Mr.Pradeep Sikri. The sister of
late Manisha, Ms.Neha, was married to Mr.Rajesh,
respondent no.7, younger brother of Mr.Pradeep Sikri. Late
Manisha suffered burn injuries on 26.9.1996 and ultimately
passed away on 1.10.1996. No complaint was lodged by
any of the relations of late Manisha. The dying declaration
of late Manisha was recorded in the presence of a doctor
and she stated that the fire, which caused her burns, was

accidental and there was no quarrel in the family. The burn injuries were stated to be caused by an operating generator.

2. It is alleged that the younger sister of late Manisha, Ms.Neha, was beaten by her husband and in-laws which resulted in a complaint being made and registration of FIR 147/1997 on 2.5.1997 u/s 498A IPC at P.S.Anand Vihar. The petitioner claims that earlier the family members of late Manisha did not make any complaints because they were under threat and they were worried about their younger daughter who was married in the same family but in view of the conduct of the respondents towards Neha, the petitioner also decided to complain about the demise of late Manisha.
3. The concerned authorities are alleged to have taken no action with the result that a private complaint was filed before the learned ACMM on 6.8.1997. The learned MM sent the complaint to DCP (Vigilance) for inquiry to be conducted u/s 156(3) Cr.P.C. A report was finally submitted and the learned MM after considering the same, decided to examine the witnesses of the complainant. The testimony of 22 witnesses of the complainant were recorded and arguments were heard on the summoning orders. The learned MM, however, dismissed the complaint on 20.9.2007. The revision petition filed against the same was also dismissed by the learned ASJ vide orders dated

8.2.2008. The petitioner aggrieved by both the aforesaid orders has filed the present petition u/s 482 Cr.P.C.

4. A perusal of the order passed by the learned MM shows that there is an in depth analysis of the testimony of the witnesses of the complainant. The first aspect considered by the learned MM, as also emphasized by the learned ASJ, is the fact that after late Manisha was removed to the RML Hospital, the concerned doctor had declared her fit for making a statement. Her statement was recorded in the presence of a doctor and as per the statement of the deceased, she was not burnt by anyone. The deceased herself stated that the fire was accidental and there was no quarrel in the family. The marriage took place in the year 1985 and there was never any complaint made till much after the demise of late Manisha on 1.10.1996 i.e. for a period of over 11 years. There was no complaint of harassment on account of bringing insufficient dowry and, in fact, the complainant (father), his wife, son and the other married daughter exonerated the accused persons as they did not suspect any foul play. CW18 is an independent witness, being Dr.Yogesh Jha, who was produced by the complainant himself and deposed that the deceased had told her that she got burnt accidentally while operating the generator.

5. It is only subsequently that the complainant, his wife and his daughter have alleged that the deceased told them that she was burnt by her mother-in-law, father-in-law and sister-in-law. This was contrary to the statement made by the deceased and there was absence of any such complaint at the relevant stage of time which arose only after the relationship of Ms.Neha, the younger daughter of the petitioner married in the same family, became estranged. In fact, Ms.Neha was married in the year 1989 in the same family and there was no complaint made till 1997. The second aspect taken note of by the learned MM is that the complainant did not raise any voice till the disputes between his second daughter and the accused arose. Neither any foul play was suspected by the deceased herself nor the complainant or his family members found any reason to complain against the accused or assign any role to them. If actually the deceased would have been burnt by the accused, the petitioner would not have taken the matter lightly. The testimonies of the witnesses examined had material contradictions and did not really support the stand of the petitioner.
6. The learned ASJ had also taken note of the fact that the complaint had been dismissed not merely on account of the fact that it was made belatedly, but after recording of evidence and scrutinizing the evidence. It was, thus, felt

that at the stage of examination of the complaint u/s 202/204 Cr.P.C. if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the court of Sessions, that will be a sufficient ground for issuing process to the accused and committing them for trial to the court of Sessions. Since there were patent absurdities in evidence produced, it was felt that there would be wastage of time in proceeding with the case further and the accused should not be dragged into such frivolous litigation.

7. Learned counsel for the petitioner sought to contend that the present petition u/s 482 Cr.P.C. was maintainable against the order passed by the learned ASJ in revision in view of the judgment of the Apex Court in Jitender Kumar Jain Vs. State of Delhi and Ors., 1999 SCC (Cri) 77. In my considered view, there is no dispute with the proposition but in order to attract the said provisions, the parameter of Section 482 Cr.P.C. must be met. The provision reads as under:

“482. Saving of inherent power of High Court.—
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

8. Thus, the aforesaid provision is enacted to protect the inherent powers of the Court to make such orders as may

be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, it is trite to say that such power has to be exercised sparingly and should not be resorted to like a remedy of appeal or revision. Thus, it would amount to an abuse of the process of the Court if without prima facie case having been made out a person is summoned to face trial in a criminal proceeding as observed in Laloo Prasad Vs. State of Bihar, (1997) 2 Crimes 498 (Patna). The Apex Court has, in fact, observed that in exercising jurisdiction under the said provision, the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not (State of Bihar Vs. Murad Ali Khan, AIR 1989 SC 1). The judgment referred to by learned counsel for the petitioner in Krishnan and Anr. Vs. Krishnaveni and Anr., 1997 SCC (Cri) 544 also states the same and emphasizes that such power has to be exercised sparingly.

9. Learned counsel for the petitioner sought to emphasize that while examining a complaint, the Magistrate holding the preliminary enquiry u/s 203/204 Cr.P.C. has to see whether there is prima facie evidence in support of charges but does not have to weigh evidence meticulously which would amount to exceeding his jurisdiction and in view thereof

referred to the judgment of the Apex Court in Kewal Krishan Vs. Suraj Bhan and Anr., AIR 1980 SC 1780.

10. On hearing learned counsel for the petitioner on the aforesaid aspect, I see no violation of the said principle. The learned MM has examined the evidence, which he is entitled to do, and found that there was no prima facie evidence in support of the charges. If such an enquiry had not been made, the grievance would have been that there is no proper application of mind by the learned MM. Once the learned MM has applied his mind, a grievance is now sought to be made that what the learned MM has done is weighing evidence meticulously which is not so from a reading of the impugned order.
11. Learned counsel for the petitioner also sought to emphasize that a Magistrate cannot dismiss a complaint u/s 203 Cr.P.C. merely on grounds of delay and should not allow himself to be influenced by considerations of the motive by which the complainant may have been actuated in moving the matter or by any other consideration deciding the facts which are adduced by the complainant in support of the complaint. In this behalf reference has been made to a judgment of the single Judge of the Madras High Court in Karumuthu S. Chockalingam Vs. T. Kannappan and Ors., 1977 CRL. L.J. 1382.

12. Once again, as discussed aforesaid, the learned MM has emphasized the delay aspect but that is not the only reason for dismissal of the complaint. The evidence produced by the complainant has been examined to form a prima facie view and, thus, there is an examination on merits of the case. It is not the motive which has weighed with the learned MM but what is emphasized by both the courts below is the absence of any grievance on the part of the complainant or his family when the incident took place or even thereafter till the dispute arose between the second daughter of the petitioner and her in-laws (both sisters being married into the same family). There was also no prior antecedent or complaint during the long period of 11 years of marriage of the deceased and even during the eight years of marriage of the younger daughter of the petitioner till the dispute arose in 1997.
13. The aforesaid facts are to be considered that the statement made by the deceased of her own free will in the presence of the doctor who had certified her to be fit to make a statement. The deceased categorically stated that she had no animus against her in-laws and she got burnt in an accident. Such a statement cannot be ignored and taken lightly.
14. It, thus, appears that the subsequent disputes between the second daughter of the petitioner with the accused has

possibly resulted in revengeful attitude of the petitioner and his family members which resulted in filing of the complaint even though no prima facie material could be produced in support of the same.

15. The present case is not one where this Court should exercise jurisdiction u/s 482 Cr.P.C.

16. Dismissed.

MARCH 24, 2008
'sp'

SANJAY KISHAN KAUL, J.