

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of order : 21st January, 2008

CRL.M.C. 4742-43/2005

BHASKARLAL SHARMA & ANR. Petitioners

Through Mr. Vikas Pahwa and Mr. Peeyush
Singh, Advocates.

versus

MONICA Respondent

Respondent in person and
Mrs. Vinay Malhotra, mother of the Respondent.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

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| 1. Whether Reporters of local papers may be allowed to see the order? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J. (open court)

1. The Petitioners, who are the father-in-law and mother-in-law respectively of the Respondent Complainant Ms. Monica, have filed this petition under Section 482 of the Code of Criminal Procedure 1973 (CrPC)

seeking the quashing of a summoning order dated 21st March, 2005 passed by the learned Metropolitan Magistrate (‘MM’) in Criminal Complaint No. 287/1A (tiled *Monica v. Vikas Sharma & Ors.*).

2. The arguments of learned counsel for the Petitioners Mr. Vikas Pahwa and those of Mrs. Vinay Malhotra, mother of the complainant as well as the complainant have been heard.

3. The marriage between the Respondent and Mr. Vikas Sharma, the son of the Petitioners here, took place on 16th January 2004 in Delhi. Soon thereafter the parties have for Johannesburg enroute to Congo. They lived together in Congo till 5th April 2004. The complainant returned to Delhi on 5th April 2004 and remained at the residence of the Petitioners till 10th May 2004 when she returned to Congo. The complainant and Mr. Vikas Sharma stayed together in Congo between 10th May and 21st May 2004 when they returned to India. However by this time the relationship between the parties broke down and from 14th June 2004 the complainant began living at her parents’ place.

4. On 9th September 2004 the aforementioned complaint was filed in the court of the learned MM. After examining the complaint and the testimony of the complainant, the learned MM passed the following summoning order on 21st March 2005:

“Present: Complainant in person.

Smt. Vinay Malhotra, mother of the complainant. She is also attorney of the complainant. I have already heard and carefully perused the record. I have also carefully perused the testimony of CW-1 Ms. Monica the complainant and the other record.

In view of record and submissions put forth. I am of the considered view that complaint has been filed well within the period of limitation. The complainant Monica, as per the record got married to Vikas Sharma, accused No.1 on 16.1.2004. Accused No.2 & 3 Bhaskar Sharma and Bimla Sharma @ Anju Sharma are father-in-law and brother-in-law of the complainant respectively. The testimony as well as the other record in the complaint clearly shows regarding the cruelty and harassment to which the complainant was subjected and regarding non-return of stridhan articles by the accused persons despite demand, which are in dimension of the accused persons, which were entrusted to them.

The cause of action accrued in Delhi also. Even E-mails have been received in Delhi. Hence this Court in having jurisdiction to try and entertain this complaint.

Accordingly, in my considered view, prima facie case is made out against all the three accused i.e. Vikas Sharma, accused No.1 husband of the complainant. Bhaskar Sharma, accused No.2, father –in-law of the complainant and Bimla Sharma @ Anju Sharma, accused No.3, mother-in-law of the

complainant.

I take cognizance against all the three accused for the offences punishable under Section 498A/406 IPC read with Section 34 IPC.

Accordingly, all the three accused be summoned on all the available addresses on record on filing of PF/RC/Speed Post/AD/Courier returnable by 29.6.2005. Dasti be given.”

5. It appears that on 29.6.2005 when the matter was listed before the learned MM applications for exemption of the appearance of the accused were filed. The learned MM was not convinced about the reasons adduced for seeking exemption and concluded that the three accused were avoiding appearing before the Court. While dismissing the applications, she directed issuance of Non-Bailable Warrants to each of the accused. An assurance was given to this Court on 14th September 2005 in Crl. M. C No. 3673-75 of 2005 filed by the Petitioners that they would appear before the trial court on the next date of hearing. Meanwhile on 29th May 2005 the present petition was filed by the petitioners for the reliefs as prayed for. While directing notice to issue in this petition on 29th May 2005, this Court clarified that there was no stay of the trial court proceedings and that “mere pendency of this petition would not be a ground for adjournment before the learned trial court”.

6. On account of the non-appearance of Mr. Vikas Sharma and his mother orders came to be passed by the trial court declaring them as proclaimed offenders in terms of Sections 82/83 of the CrPC. This was offered as a reason why, although they were willing to settle the dispute amicably, the Petitioners were unwilling to return to India. This Court then considered the matter on several dates but it transpired that no settlement was possible.

7. Meanwhile the Petitioners appear to have instituted certain criminal proceedings against the complainant in the criminal case in Jaipur. Consequently, the complainant Ms.Monica filed Transfer Petition (Crl.) No. 258 of 2007 in the Supreme Court of India seeking transfer of those proceedings to the criminal court in Delhi. In the said transfer petition an order was passed on 15th January 2008 by the Supreme Court on an application filed by the complainant Ms. Moica. The said order records that Mr. Vikas Sharma was ready to come to India to attend mediation proceedings if so directed. In view of these developments, the Respondent Ms. Monica today withdrew the connected Criminal Misc. Case No. 7678 of 2006 which she had filed seeking early disposal of her complaint by the trial court, with liberty to seek a similar relief at a later point in time.

8. The submissions of Mr. Pahwa, learned counsel for the Petitioners was that the reading of the complaint as a whole does not even make out a prima facie offence under Section 406 or Section 498A IPC against either Petitioner No.1 or Petitioner No.2. As regards Section 406 IPC, his contention was that the essential ingredients of entrustment of property by the complainant to the accused and the misappropriation of such property by the accused is missing in the complaint. He relied upon the judgments of the Supreme Court in *Onkar Nath Mishra v. State 2008 (1) JCC 65*, *Manjula Sinha v. State of U.P. 2007(9) SCALE 16* and the judgments of this Court in *Narendra Kumar v. State 2008(1) JCC 1* and *Savitri Devi v. Ramesh Chand 2003 4 AD (DELHI) 73*. Adverting to Section 498A IPC, Mr. Pahwa submitted that the essential ingredients as contained in Explanation (a) to the provision, i.e. “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” was missing. He submitted that the allegations made against Petitioners 1 and 2 whether taken collectively or separately do not at all make out a case for proceeding against them under either Section 406 or Section 498A IPC. He has taken this Court through the various paragraphs of the complaint in support of the above submissions.

9. The mother of the complainant Mrs. Vinay Malhotra who appeared on her behalf referred to again several paragraphs of the complaint as well as the statement at the pre-summoning stage recorded of the complainant by the learned MM. She submitted that there was enough material on record at the pre-summoning stage for the learned MM to proceed to issue summons to the accused to face trial under Sections 406 and 498A IPC.

10. In the first instance, this Court would like to recapitulate the scope and ambit of the powers of this Court to quash criminal proceedings when its jurisdiction under Section 482 Cr.PC is invoked. In the leading case *State of Haryana v. Bhajan Lal (1992) Supp 1 SCC 335* (p. 378) the Supreme Court delineated the law as under:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a

case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Sections 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. Now turning to the complaint, it is seen that it narrates the events that took place immediately preceding the marriage and during the time parties live together. It appears that Mr. Vikas Sharma was earlier married and was divorced from his first wife by a decree dated 8th July 2003 passed by the Civil Court in Lubumbashi, Congo. Through his first wife Mr. Vikas

Sharma had two children first born; the first on 23rd April 1999 and the second on 8th July 2000. It is stated in the complaint that the marriage took place after the parties came into contact through the Sycorian Matrimonial Services. According to the complainant although an assurance was given about the conduct and character of Mr. Vikas Sharma prior to the marriage, she found that the behavior of Mr. Vikas Sharma was different thereafter. Mr. Vikas Sharma is stated to be engaged in the family business of export and import of about 150 commodities and is the Managing Director of the family managed company since 1994 having its operating business at Delhi, Bangkok, Shanghai, Brussels, Johannesburg, Kinshasa, Lubumbashi, Uganda etc. It was stated that soon after marriage Mr. Vikas Sharma started humiliating and abusing the complainant and caused her tremendous mental torture. The complaint goes on to narrate the incidents of such humiliation and torture till 25th May 2004 when the complainant along with Mr. Vikas Sharma back to Delhi to stay with Petitioners here in their house at Lajpat Nagar. It also narrates the incidents of torture and harassment thereafter till 14th June 2004 when according to the complainant she was compelled to leave for her parents' place.

12. The allegations in the complaint as regards the conduct of the

Petitioners prior to marriage may not be immediately relevant for the purposes of Section 498A IPC or 406 IPC. The relevant allegations concerning their conduct after the marriage read as under:

“16. That immediately after Accused No.1’s departure from India, the Accused No.3 started humiliating and taunting the complainant on trivial matters. When the complainant approached to touch the feet of Accused No.3 (her mother-in-law) as a way of reverence on 5th June 2004, she kicked her with her leg and told her that her mother is a liar as she prevented the Accused no.3 from speaking to the complainant when at her parental house thus presenting her meeting with her brother-in-law, who was in Delhi on a short trip. **Immediately after this, the Accused No.3 started poisoning the ears of the Accused No.1, which was very evident from Accused No.1’s Email communication sent to the complainant, the tone of email messages from respectful, affectionate and apologetic (Accused No.1’s Email Dated 4th June, 2004 attached as Annexure-7) suddenly turned to Humiliation and Separation (Accused No.1’s Email dated 19th June, 2004 Attached as Annexure-8). The Accused No.1 was so annoyed by the complaints from Accused No.3 (his mother) that on 14th June 2004, he directed the complainant on telephone to leave the matrimonial home as he was fed up of hearing complaints against the complainant from his mother (Accused No.3). The complainant accordingly came back to her parental house in the three clothes that she was wearing. All other items of Istri Dharn have been retained by the Accused.**

17. The issues raised by Accused No.2 and 3 maligning the complainant were clarified by the complainant’s father’s Email dated 16th August, 2004 (Attached herewith as Annexure-9) addressed to Accused No.1 with copes to Accused No.2 and 3. The issues being as under:

(a) Accused no.1 had told the complainant that he cannot see into the eyes of his children and that she should see with his mother (Accused No.3) the possibility of Accused No.1's kids living with him sometime in future. **In was in the light of Accused No.1's wishes that the complainant did take up the matter with Accused No.2 and 3, which was taken as an argument and because the beginning of a horrendous experience as Accused No.2 and 3 wanted the kids to be with them being very attached to their grand children.**

(b) When the complainant and Accused No.1 were at Lubumbashi, Accused No.1's brother, Mr. Mithu had visited their place. Accused No.1's brother had praised the complainant's intelligence and with Accused No.1's consent offered her to take on hand sales overseeing and liaising between Lubumbashi and Shanghai offices. On hearing this, the complainant had spoken to her mother-in-law (Accused No.3) in Accused No.1 and her brother-in-law's presence for taking on hand business activities. Accused No.3 had consented and then only the complainant started working for what she was told by her brother-in-law and Accused no.1. Despite this, **subsequently Accused no.2 and 3 had shown their serious disapproval for the complainant's working for the family business.**

(c).....

(d).....”

18. That (1) is supporting Business activities undertaken by the complainant on the request of Accused No.1 and his brother that too after obtaining concurrence of Accused No.3 over phone and (2) **complainant request to Accused No.2 and 3 for the children of Accused No.1 living with them after sometimes as per the instructions of Accused No.1(because he was carrying guilt of not living with his children from his first wife) was rebuffed by Accused No.2 and 3 even. Threatened the complainant to finish her relationship with Accused No.1 as in their opinion a girl**

(the complainant) from humble family had come to their house and was trying to grab the control of their home, children and business.

19(a) To humiliate the complainant, the Accused No.3 gave two used lady suits of her daughter to the complainant and told her to get the clothes refitted and use them. It is pertinent to mention her that the Accused No.2 and 3, who are multi-millionnaire had only provided the attire (including jewellery) for reception and the above mentioned tow old suits of their daughter to the complainant (their newly wed daughter-in-law). In spite of this, the complainant being in the family was confident that she will win over the parents-in-law (Accused No.2 and 3) with her love, affection and respect.

(b) to (h)

24. In an effort to save the marriage, the complainant's parents met Accused No.2 on 25/August/2004 at Vikram Hotel. During discussion, the complainant's parents requested **Accused No.2 to give back the complainant's clothes and jewellery as the same were required for the purpose of attending social functions. All the efforts made by the complainant's parents evoked no positive on payment of Rs. 25 lakhs as compensation to the complainant. He even refused to return the complainant's clothes and jewellery until Divore the Mutual Consent was accepted by the complainant, thus using coercive methods.**

Complainants parents proposal to at least call the Accused No.1 to India for a talk to at least understand his reasons for seeking separation have been of no avail as the complainant is still willing for adjustments to save her marriage.

29.That the complainant was directed by the Accused No.1 over phone to leave the matrimonial home on 14/June/2004. Accordingly the complainant came back to her parental house in the three clothes as all her clothes were carried by Accused No.1 to Lubumbashi on 27/Ma/2004 and the Accused No.1 had directed the complainant to join him a Johannesburg after

10 days. **All other items of Istri Dhan are in the possession of Accused No.1, 2 and 3, as per details attached in Annexure-17.**” (emphasis supplied)

13. On reading the above paragraphs as well as the statement made on oath by the complainant before the learned MM at the pre-summoning stage, which is consistent with what is stated in the complaint, this Court is of the considered view that the complaint when read as a whole does make out a prima facie case against Petitioners 1 and 2 who are referred to as Accused Nos. 2 and 3 respectively in the complaint. The highlighted portions of the above extracts refer to the specific role and conduct attributed to each of the accused for the offences under Sections 406 and 498 A IPC. This Court is unable to be persuaded to hold that the case falls under any of the categories that have been illustratively set out by the Supreme Court in *Bhajan Lal*.

14. In order to attract the offence under Section 498A it would have to be proved that the wife was subjected to cruelty which could include mental cruelty. Whether the conduct was such as to cause ‘grave’ injury or danger to the mental health of the woman are all matters to be examined only after the detailed evidence is led by the prosecution. At this stage, when a

prayer is made for quashing of the criminal proceedings, this Court is not expected to go through the pre-summoning evidence in great detail and determine whether in fact all the ingredients of the offence as set out under Section 498A are actually made out or not.

15. Likewise the submission of the petitioners regarding non-entrustment of property to them by the complainant for the purposes of attracting the offence under Sections 403 read with 406 IPC is without merit. It was attempted to be shown by learned counsel for the Petitioner that there is no specific averment that property was entrusted by the complainant to either of these Petitioners or that they had criminally misappropriated the same. This Court is unable to agree. The averments in paras 16, 24 and 29 of the complaint when read taken collectively do indicate that the property which belonged to the complainant was, according to the complainant, in the possession of the Petitioners and on demand they refused to return such property. At this stage, in order to examine if the complaint makes out a prima facie case, it is not necessary to go into the fine details and determine whether what is stated in the complaint is true or not.

16. In this context the observations of the Supreme Court in *Rashmi*

Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397 would be relevant. In that case while examining Section 406 in some detail, this Court observed as under (SCC p. 407):

“The expression ‘entrustment’ carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”

17. Keeping in view the above facts and circumstances, this Court is of the considered view that no case has been made out by the petitioners for interference by this Court in exercise of its powers under Section 482 CrPC to quash the criminal complaint titled ***Monica v. Vikas Sharma & Ors.*** and the consequential proceedings. The petitions are accordingly dismissed but in the circumstances no order as to costs.

18. The interim orders stand vacated.

S. MURALIDHAR, J.

JANUARY 21, 2008

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