

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. No. 3689/07 & Crl. M. A. No. 13492/07**

Date of decision : 29.04.2008

AJAY NAYYAR Petitioner
! Through : Mr. Sanjeev Kumar, Adv.

Versus

\$ STATE & ANOTHER Respondents
^ Through : Mr. M.P. Singh, APP for the
State.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. This petition has been filed by petitioner Ajay Nayyar who happens to be the brother in law of the complainant for quashing FIR No.776/2004 under Sections 498-A/406/34 IPC, Police Station Janak Puri

qua him only on the grounds that no role has been assigned to him by the complainant in the FIR and the allegations of cruelty and harassment for demand for dowry etc. are only against husband of the respondent/complainant as well as against his mother Champa Nayyar.

2. Perusal of the FIR indicates that the present petitioner has been named only in the last line of the complaint and roll assigned to him is "Is Sare Prakaran Mein Unka Beta Ajay Nayyar Bhi Bhagidaar Hai". Petitioner was granted anticipatory bail on 6th January, 2005.

3. After coming to know that petitioner has been granted anticipatory bail complainant made a supplementary statement before the Investigating Officer on 2.2.2005. In this statement, she admitted that the petitioner was living separately and therefore, she could not say anything more against him but it was after coming to know that he had been released on anticipatory bail, she consulted her lawyer who advised her that action could be taken against

petitioner Ajay Nayyar and therefore, she made supplementary statement. Even in this statement, she has only alleged that the entire responsibility of disturbing the environment in her house was of Ajay Nayyar as he usually visited his brother's house despite separate residence and always abused her. In this statement, she further alleged that petitioner used to disturb her mentally and used to instigate her husband and mother in law. She even held the petitioner responsible for termination of the job of her husband Naveen Nayyar. She also stated in the statement that he used to instigate her husband and mother in law to fight with her parents and her sisters and threatened to kill them.

4. This statement was made by the complainant after about five months of the registration of the FIR and as stated above after coming to know of grant of anticipatory bail to the petitioner. Even this statement is vague in nature. Admittedly the petitioner has been residing separately. As a brother he must have been visiting the house of Naveen Nayyar as elder brother. Complainant has not

specified the nature of abuses which petitioner used while addressing her parents. Complainant has not narrated any incident which prima facie can be considered cruelty mental as well as physical committed by the petitioner towards her. This statement being an afterthought and also vague in nature does not make out any prima facie case against the petitioner.

5. Chargesheet has already been filed after the filing of this petition. Under these circumstances, considering the nature of the investigation conducted against the present petitioner, the evidence collected by the prosecution and the nature of allegations leveled by the complainant, I am of the view that prosecution has not been able to make out a case under Sections 498-A/406 IPC against the petitioner. He being brother of Naveen Nayyar seems to have been unnecessarily dragged into this litigation. He was living separately and therefore, there could hardly be an opportunity for him to instigate his brother and mother against the complainant or abuse her. Admittedly, he never physically tortured the complainant.

6. Hence, under the circumstances when the evidence collected against the petitioner is weak and it is not likely to end in conviction of the petitioner in case the trial of the case is allowed to be continued against him and to avoid the petitioner from facing the ordeal of long trial of the case when chargesheet has been filed and even the charges have been framed, I find it a fit case where FIR as against the petitioner is ought to be quashed. Consequently, petition is allowed. FIR No. 776/2004 under Sections 498-A/406/34 IPC, Police Station Janak Puri as against the petitioner only is hereby quashed.

7. Petition stands disposed of accordingly. Attested copy of the order be sent to the trial court as well as to the State.

**ARUNA SURESH
(JUDGE)**

**April 29, 2008
jk**