

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) No.380 of 2009

GOPENDRA MOHAN GUPTA & ORS. Petitioners
Through: Mr. D.M.Bhalla, Advocate.

versus

STATE Respondent
Through: Mr. Saleem Ahmed, Additional
Standing Counsel for State.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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

ORDER
25.03.2009

CRL.M.A. No. 3159/2009

Exemption allowed subject to all just exceptions.

The application is disposed of.

W.P.(CRL) No.380/ 2009 & CRL.M.A. No. 3160/2009 (stay)

1. Notice. Mr. Saleem Ahmed, learned counsel for the State accepts notice.

2. The prayer in this petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure 1973 ('CrPC') is for the quashing of FIR No. 101 of 2008 registered at Police Station CAW Cell, Nanakpura under Sections

406/498A/34 IPC and all proceedings consequent thereto. The present petition is filed by the husband, mother-in-law and sister-in-law of the complainant wife whose marriage with the Petitioner No.1 was solemnized on 24th November 2005.

3. The perusal of the FIR reveals that specific allegations have been made against each of the petitioners by the complainant. It is stated that at the time of *tikka* and marriage on 22nd and 24th November 2005 respectively the mother-in-law demanded Rs.5 lakhs. On 25th November 2005 the mother-in-law and sister-in-law taunted the complainant for not bringing dowry. The FIR states that they took away all the cash and jewellery and “since that day my mother-in-law, sister-in-law and husband used to scold me on one or other thing and sometimes used to do *maar peet* with her. Mother-in-law used to take Rs.10,000/- from her salary every month.” Even after the complainant became pregnant in June 2006 then they did not stop torturing her. In September 2006 when, as asked by the mother-in-law, the complainant stood on a stool for cleaning and sister-in-law pushed her as a result of which her foot muscles got torn. They took about three months to heal. Demands for a car were made by the three Petitioners in November 2006, a few days before Deepawali. Upon her refusal they started beating the complainant and threatened to kill her. She was beaten on the day of *Karva Chauth*. On the morning of 23rd November 2006 at around 4 am the

mother-in-law having a bottle of petrol in her hand as well as the sister-in-law and the husband came to her room. The husband woke her up by pulling her hairs and the mother-in-law sprayed petrol on the complainant. Despite her entreaties they did not spare her. The sister-in-law ignited her by matchstick. The complainant screamed and ran into the bathroom. She succeeded in extinguishing the fire. She was nearly half burnt and by that time her father-in-law came there and was shocked. He chided the Petitioners saying that if she died then they all would go to jail. The complainant started begging all of them to take her to hospital but her husband stated that she would be taken to hospital on condition she would not speak anything against any of them. It is stated that her sister-in-law and husband took pictures of her burnt body on the mobile phone and her statement, made under coercion, was recorded. In the FIR it is specifically stated that on account of the fear induced by her in-laws and her disturbed mental condition, the complainant made statements to her relatives, police officials and doctors in favour of her in-laws. She stayed in ICU for six days. She was discharged after 16 days' in the hospital. It is stated that on 2nd January 2007 the complainant's operation for skin grafting was fixed. Without bothering about the complainant the husband went to Kerala for holidays. It was then that the complainant disclosed to her mother, father, brother and sister about the cruelties she was subjected to and that she was burnt by her in-laws and husband. Skin grafting was

done on the complainant on 2nd February 2007 for which a sum of Rs.4,40,000/- was spent by her father, and for which he had to borrow a loan. After returning from Kerala the Petitioners came to her father's house and asked the complainant to withdraw money from her Bhavishyanidhi. They stated that after the treatment was complete, and the car and the amount demanded by them was ready, she could call them and they would come and fetch her. When on 26th March 2007 a baby girl was born, none of the in-laws came to meet her despite being informed. The complainant proceeded to state in the FIR that she received summons from the civil court on 16th October 2007 in the application filed by the husband under Section 9 of the Hindu Marriage Act 1955 ('HMA'). Personal meetings were organized between the parties at the request of the learned Civil Judge but no settlement was arrived at on account of petitioners' attitude. The husband withdrew the said petition on 1st August 2008. It is stated that in-laws refused to return dowry articles.

4. The above allegations are clear and specific. Despite this learned counsel for the Petitioners vehemently argued that on reading the FIR as a whole not even a prima facie case is made out against any of the Petitioners for the aforementioned offences.

5. Learned counsel for the Petitioners was repeatedly asked whether he wished to argue the case on merits or wished to withdraw the petition reserving liberty to advance these contentions at an appropriate stage before the trial court. Learned counsel insisted that he would argue the case on merits and that this Court should give a decision on the submissions made. Consequently, the learned counsel was heard at length.

6. The main plank of the submissions is based on two documents. One is a statement made on oath by the complainant before the Sub Divisional Magistrate ('SDM') soon after the incident of 24th November 2006 when she suffered burns. In the said statement she explained the incident as having occurred when she was performing prayers early in the morning. She stated that while lighting an agarbatti, she noticed a spot on her saree, and in order to clean it she took out petrol which suddenly caught fire from the agarbatti. The complainant has already explained in the FIR, the circumstances under which she made such statement before the SDM. In any event, this is an issue which can only be determined at the trial.

7. The second document relied upon by learned counsel for the Petitioner is an affidavit dated 22nd July 2008 filed by the complainant in HMA No. 613 of 2007 before the learned Additional District Judge ('ADJ'), Delhi. In this affidavit the complainant

termed the incident of 24th November 2006 as an unfortunate “accident”. According to learned counsel for Petitioners, the above documents indicated the shifting stand of the complainant.

8. The affidavit dated 22nd July 2008 is not entirely inconsistent with the central thrust of the complainant’s grievance regarding the torture suffered by her at the hands of Petitioners as well the constant demands made by them for dowry. This is plain from paras 5 to 18 of the said affidavit which read as under:

“5. I say that prior to this happening there arose frequent bickering and arguments in the family over petty issues, most of the times at the provocation and instance of the petitioner’s mother and sister who used to interfere in our martial affairs constantly.

6. I say that petitioner on the contrary constantly blamed me and my parents for the discord in the family which added to the tension.

7. I say that I had tried my best to adjust in the family of the petitioner despite being humiliated at every step of the way and constantly taunted by the petitioner’s mother and the sister either on the point of dowry or on the point that I was not beautiful enough to suit the company of the petitioner.

8. I say that even when I was at my advanced stage in pregnancy I used to reach office after changing two buses, still the petitioner never bothered or cared to take appropriate measures to make the

situation better, much less sympathizing and/taking me for any outings, much less, even at such critical period never bothered to change his uncaring lifestyle.

9. I say that at the first marriage anniversary an all too familiar situation happened and there was argument between the petitioner and myself, and unfortunately an accident took place in which my clothes caught fire and the petitioner doused the flames, however, even at such a tragic incident the petitioner never tried even to console me.

10. I say that I was admitted to Balaji Medical Institute Hospital but there also neither the petitioner nor his relatives took care of me. Never even bothered to pay a visit.

11. I say that after about 15-17 days in the hospital I was discharged and returned to my matrimonial home only to be treated indifferently and neglected when utmost care was enquired to recover from the trauma of the incident. It was my sister who looked after me during this period.

12. I say that thereafter the petitioner and his family was insistent upon sending me to my parental home. At this juncture, the petitioner's family took a trip to Kerala and sent me to my parental home. However, after returning, neither the petitioner nor his family members bothered to find out about my whereabouts, much less taking me back to my matrimonial house.

13. I say that all my jewelries and ornaments i.e. stridhan are lying at my matrimonial home and are in the possession of the petitioner and his family.

14. I say that I was left to fend for myself with my new born and neither the petitioner nor his mother nor anyone from his family visited me at my parental home.

15. I say that in the meanwhile, so a way to eyewash the judiciary and law, the petitioner very tactfully instituted this instant case bearing the above mentioned number, under Section 9 of Hindu Marriage Act for restitution of conjugal rights, when in reality I have always desired and expressed my wish to live in my matrimonial house.

16. I say that during the pendency of this instant case at the instance of me and my family members a meeting was arranged, however, the petitioner suggested that he would keep me and my daughter for 10 days that too on a “trial” basis and thereafter will throw me out of his pleasure. Upon this statement by the petitioner and his family members I backed out of the mediation which therefore failed.

17. I say that I am fearful of the mental agony, torture and harassment by the petitioner and his family members and that if it is assured by this Ld. Court that I will not be harassed in any manner and no torture of any kind would be caused and that I

would be given due respect as a bride of the family is entitled to, as expressed earlier I would be more than willing to join the society of the petitioner.

18. I say that like any married Indian lady and a daughter of a family who has deep roots in the society and is well cultured, I always long for joining the company of my husband. I pray to this Hon'ble Court that the petition of the petitioner herein be allowed and a decree of restitution of conjugal rights be passed so that I could join the company of my husband and provide the love and affection of a father to my baby daughter.”

9. The above affidavit coupled with the statements in FIR appear to indicate that the complainant was compelled by the Petitioners to give statements in their favour to the police and other authorities soon after the incident. The above documents and the FIR when viewed collectively paint a poignant picture of a young woman with an infant child trying her best to save her marriage and resume her matrimonial life, notwithstanding the cruelties to which she was being subjected.

10. Learned counsel for the Petitioners sought to rely upon the judgment of the learned Single Judge of this Court in ***Narender Kumar v. State I (2008) DLT 337*** to urge that the contradictory statements made by the complainant before the SDM discredited the entire FIR and therefore, the whole proceedings should be quashed.

This Court is unable to agree with the submissions made. The facts in the decision in *Narender Kumar* are clearly distinguishable.

11. As far as the present case is concerned the allegations in the FIR are not only from specific about the torture and demands for dowry but also to offer an explanation for the statement made earlier by the complainant before the SDM and the affidavit dated 22nd July 2008 before the learned ADJ. Significantly the husband, after filing an application under Section 9 HMA, conveniently withdrew it on 1st August 2008 after the above affidavit was filed by the complainant offering to return to the matrimonial home. So much for the bonafides of the Petitioner No.1 husband wanting to take the complainant wife back in the matrimonial home.

12. Finally learned counsel for the Petitioners sought to place on record copies of certain e-mails exchanged between the Petitioner No.1 and the complainant wife which, according to him, show that the FIR was registered on false premises. It is premature for this Court to examine such material at this stage. Such documents should appropriately be furnished to the Investigating Officer who is undertaking the investigations in the case.

13. Investigations are still in progress and a charge sheet is yet to be filed. This is an additional factor that weighs with this Court in

declining to exercise its power under either Article 226 of the Constitution of India or Section 482 CrPC and quash the proceedings.

14. There is absolutely no merit in this petition. This Court is unable to accept the contention of learned counsel for Petitioners that when the FIR read as a whole, and considered along with the documents referred to by the Petitioners, not even a prima facie case is made out against any of the petitioners for the aforementioned offences.

15. Notwithstanding the fact that the counsel for the Petitioners insisted on a decision on merits, this Court clarifies that the observations hereinbefore are only tentative and for the purpose of deciding whether a case made out by the Petitioners for quashing the criminal case. The observations will not influence the opinion to be formed by the trial court at any of the subsequent stages in the proceedings before it.

16. The petition and the pending application are dismissed.

S. MURALIDHAR, J

MARCH 25, 2009

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