

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV. P. NO.267/2008**

**Reserved on : 30.7.2009**  
**Date of Decision : 21.12.2009**

**CHANDER KANTA LAMBA & ORS.**

**.....Petitioners**

Through: Ms.Geeta Luthra, Sr.Adv.  
with Mr.Jatin Sehgal,  
Advocate.

Versus

**STATE & ORS.**

**..... Respondents**

Through: Mr.Jaideep Malik, APP for  
the State.  
Mr.Tiger Singh, Adv. for  
the respondent no.2.

**CORAM :**

**HON'BLE MR. JUSTICE V.K. SHALI**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ?                               | YES |
| 3. | Whether the judgment should be reported in the Digest ?               | YES |

**V.K. SHALI, J.**

1. This is a revision petition filed by Chander Kanta Lamba, Suman Bhardwaj, Manju Mal and Neeru Behl-sisters in law of the complainant Ms.Namrata Behl against the order dated 04.03.2008 by virtue of which the learned MM, Patiala House Courts directed the framing of charge under Section 498A/34 IPC against the petitioners.
2. Briefly stated the facts of the case are that the complainant got married with one Sh.Naresh Behl according to Hindu rites and ceremonies on 17.1.2000 in Delhi. It seems that

the marriage did not last long and resulted in breakdown, as a consequence of which the complainant, Ms.Namrata Behl lodged a complaint on 11.9.2001 with the Crime Against Women Cell to take action against her husband Naresh Behl and his other family members for allegedly making illegal demand of dowry and treating her with cruelty. On the basis of the said complaint, an FIR No.111/2002 was registered at P.S. Malviya Nagar by the police against Naresh Behl (husband), Mohini (mother in law)(since deceased), Chander Kanta Lamba, Suman Bhardwaj, Manju Mal, Poonam Behl and Neeru Behl-sisters in law and one Rajiv Behl, brother in law of the complainant.

3. After investigation, the charge sheet was filed. While as all the accused persons were sent for trial the name of Poonam Trehan was shown in column No.2 in the charge sheet. She was residing out of India. Column No.2 deals with the persons who are not sent for trial for lack of evidence.
4. It has been stated in the impugned order that so far as the mother in law of the deceased is concerned, she has expired during the pendency of the proceedings and accordingly, the proceedings vide order dated 20.6.2006 against her are deemed to have abated.
5. In the complaint, the main allegation made by the complainant against the accused persons and their brother Naresh Behl was that they had demanded a sum of Rs.5

lacs and her articles were retained which are alleged to have been returned to her during the pendency of the investigation. So far as the present petitioners are concerned, the allegations made in the complaint are that Chander Kanta Lamba, Suman Bhardwaj and Manju Mal use to plant false stories about the complainant and Manju Mal and Neeru Behl had also deliberately and intentionally removed the money from the purse of their mother, Mohini and accused the complainant of stealing her money. There are general allegations that all the sisters in law namely the present petitioners had subjected her to demand of dowry and consequent cruelty on the basis of which they deserves to be dealt with in accordance with law.

6. The learned Magistrate after hearing arguments discharged Rajesh brother in law of the complainant while as it directed framing of charge against the present petitioners for an offence u/s 498A IPC only.
7. The learned counsel for the petitioners had cited six judgments, which are detailed below:

- “ i) **Neera Singh Vs. State (Govt. of NCT of Delhi) & Ors.** 138 (2007) DLT 152
- ii) **Anu Gill Vs. State & Anr.** 2001 (2) JCC (Delhi) 86
- iii) **Ramandeep Kaur Vs. State of Punjab** 2001 (4) RCR (Criminal) 394
- iv) **Mukesh Rani Vs. State of Haryana** 2002 (1) RCR (Criminal) 163
- v) **Ujjal Maitra & Ors. Vs. Kanchan Maitra** 1998 Cri.L.J. 1002
- vi) **Ramesh & Ors. Vs. State of Tamil Nadu** AIR 2005 SC 1989”

8. But the learned MM has distinguished cases of Anu Gill, Ramandeep Kaur, Ramesh and Ujjal Mitra and observed that the facts of these cases are totally different and there are allegations against the present petitioners which constitutes subjecting the complainant to cruelty, if not physical at least the mental which falls within the ambit of Section 498A IPC and therefore, directed the framing of charge u/s 498A of the IPC.
9. As regards, the offence u/s 406 of IPC all the accused persons were discharged from the aforesaid offence.
10. The petitioners feeling aggrieved by the aforesaid impugned order have preferred the present revision petition.
11. I have heard the learned counsel for the petitioners and the complainant as well as the learned APP.
12. The main contention of the learned Senior counsel for the petitioners is that the learned MM has grossly erred and committed illegality by directing framing of charge against the present petitioners, who were admittedly married much prior to the marriage of the complainant with the brother of the petitioners. It is contended that they were living in their matrimonial homes separately and peacefully. They had obviously no reason to make suggestions to the complainant to get the dowry from her parents or subject her to cruelty. The learned Senior counsel has referred to the authorities which were cited before the learned Magistrate in order to urge the point that invariably in a

matrimonial dispute there is a tendency on the part of the complainant to enrope almost all the relatives once the relations get strained between the parties and this is precisely what has been done in the instant case.

13. Secondly on merits also, it has been contended by the learned Senior counsel that the allegations which are made against the present petitioners are too generic in nature which are highly improbable to be believed. No date, time or place has been given by the complainant in her complaint and moreover an impression is sought to be created as if all the petitioners had made the demand for dowry around the same time and simultaneously subjected her to cruelty.
14. The learned counsel for the complainant has refuted the contention of the learned Senior counsel for the petitioners and contended that at the stage of framing of the charge only a prima facie case has to be made out and since the learned MM has formed an opinion that a prima facie case is made out against the present petitioners this revisionist Court should not sit as a Court of Appeal and substitute its own view in place of view expressed by the learned Magistrate. The learned counsel has relied upon the following judgments of the Apex Court in this regard :
15. So far as the learned APP for the State is concerned, he has left it to the Court to decide the question as to whether the

charge can be framed against the present petitioners or not.

16. I have carefully considered the respective submissions of the learned counsel for the parties and gone through the record as well as the impugned order. At the outset, I must say that the learned Magistrate has grossly fallen into a serious of error and committed a grave illegality by directing the framing of charge against the present petitioners by distinguishing the authorities referred to by the petitioner.
17. There is no dispute about the fact that no two different cases are similar. It has also been observed by the Apex Court in **Haryana Financial Corporation Vs. Jagdamba Oil Mills** AIR 2002 SC 834 that while applying the principles of law laid down in a case, the Court should not apply the law blindly or mathematically. It must analyze the facts of the case in which such a law is laid down and co-relate the same with the facts of the case where the proposition of law is sought to be made applicable.
18. In the light of the aforesaid proposition if one examines the authorities cited by the learned Senior Counsel one cannot but agree that the proposition of law which is enunciated in all these cases is that invariably whenever matrimonial relations have turned sour there is a tendency on the part of the complainant whether it is done by her of her own free will or at the instigation of her parents, brothers, sisters or

even legal advice to make all kinds of wild and reckless allegations against the entire family of the husband.

19. By such a conduct not only the gravity of the offence against the husband who is the main accused gets diluted, even the parents in law or other relative who are not ordinarily living in a joint family are enroled and weakened because she loses on her credibility. It is in this background that in Mukesh Rani's case (supra), the learned Single Judge of Punjab and Haryana High Court has observed that

“whenever there is a matrimonial dispute between the husband and wife for the fault of husband other relations of the husband that is the brothers, sisters, parents are also roped in the litigation on the allegation of demand of dowry, whether they are living jointly or separate and sometimes even the parents who are aged 80 to 90 years and are unable to walk or talk and the sisters living at far off places in the matrimonial house are involved.”

20. The learned Judge had shown the concern of the Court that the provisions of Section 498A/304B IPC and the presumptions which are permitted u/s 113A and 113B of the Evidence Act, 1872 by the legislature in its wisdom, for the protection of women, have been put to greater misuse by the girl's side than to the actual use.
21. Similar is the observation in **Anu Gill's** case by the learned Single Judge of our own High Court wherein the proceedings against the sisters in law themselves were quashed by the High Court. It is not correct on the part of

the learned Magistrate to observe that there were no allegations against the sister in laws in Anu Gill's case and therefore, the case was distinguishable. On the contrary, admittedly there were allegations against the sister in law which was considered to be totally vague, unworthy of credence by the Court. The allegations which were made by the complainant in **Anu Gill's** case was that the in-laws of the complainant had demanded various gold items apart from a sum of Rs.11 lacs from the complainant to meet the requirement of the cash expenses for the "chuchak" ceremony of Anu Gill by the parents of the husband.

22. The nature of allegations in the two cases are bound to be different and merely because a generic term of 'in-laws' was used, it did not mean that the complainant in the reported case did not make allegations against Anu Gill who would also form part of 'in-laws'.
23. Another learned Single Judge of our own High Court in case titled **Savitri Devi Vs. Ramesh Chand** 2003 (11) DMC 328 has again echoed the same sentiments of the Court that though the provision in question has been made by the good intentions of the legislature but implementation has left a very bad taste and it has become counter productive as there is a growing tendency amongst women to perpetuate an action against the parents in law, relatives irrespective of the fact whether they are minor school going children, distant relatives. Because of the FIR having been

registered against them, they are made to run for protection of their liberty.

24. In the light of the aforesaid concern which the different Judges of different High Courts have shown from time to time, one thing is very clear that as and when the relations between husband and wife get strained, then allegations are levelled not only against the husband but all his relatives with a view to teach him a lesson.
25. I have purposely not referred to all the authorities cited by the learned counsel for the petitioner because they are also echoing almost the same sentiments.
26. Coming back to the facts of the present case, I feel that this is precisely what has happened in the instant case also that although the marriage had taken place in the month of June, 2000, but the relations got strained may be on account of alleged illegal demands having been made by the husband or the relatives who were ordinarily living with him in a joint family but certainly it is highly improbable to assume that the married sisters of the husband of the complainant who got married much prior to the marriage of the complainant and were living in their own matrimonial homes would come down simultaneously to the matrimonial home of the complainant and subject her to demand of dowry and the consequent cruelty. Therefore, on this ground itself, I feel that the charge against the present petitioners is not prima facie made out nor is any

‘grave suspicion’ to have summoned such an offence available on record to put them to trial.

27. Even if it is assumed that the allegations as have been made by the complainant are true on its face value even then they do not fall within the mischief of Section 498A of the IPC. A perusal of the impugned order shows that the complainant had alleged against the petitioners that they planted false stories or that they took out money from the purse of the mother in law of the complainant and accused complainant probably of stealing of the said money or that the petitioners and her husband tied her twice in May in order to compel her to bring Rs.5 lacs. So far as these two allegations are concerned, they do not fall within the mischief of cruelty as is enunciated in the explanation to Section 498A of IPC. So far as explanation ‘a’ is concerned, it is willful conduct of such a nature which is likely to drive a women to commit suicide or cause grave injury or danger to her life whether mentally or physically which will tantamount to cruelty and certainly this does not fall within the said parameters. In explanation ‘b’, there must be harassment of the women with a view to coerce her and her relations to unlawful demand and obviously a plain reading of explanation ‘b’ would show that there should be more than one act, only then it will constitute harassment while as in the instant case, there is no such allegations that there were series of action to which the complainant was

subjected with a view to extract dowry either from her or her parents or relations. On the contrary, the allegations made in the complaint are vague, unspecified and improbable as no date, time or place of any incident is given. The same would be the fate of the allegation that the petitioners along with the husband of the complainant had tied her in May, 2000 in order to compel her to bring Rs.5 lacs from her father.

28. It is understandable or believable prima facie that her husband might have tied her subjecting her to cruelty with a view to demand dowry of Rs.5 lacs but extending the said allegations qua the present petitioners who are admittedly married sisters living separately in their own matrimonial homes is absurd, unbelievable and not worthy of credence and accordingly on merits also, I feel that the trial Magistrate has fallen into a serious error which will result in great mis-carriage of justice by directing the petitioners to face the trial for an offence u/s 498A IPC.
29. I cannot refrain from mentioning that in a case of this nature, the Court has to be very sensitive and it should not get swayed by emotions which the complainant may be suffering from with a view to put persons or relatives who are totally unconnected with the incident to the facing of the trial in itself in present times is a great deal of punishment especially in the light of the fact that the same

continues endlessly for years together on account of heavy load on the learned MM.

30. For the reasons mentioned above, I feel that the order dated 4.3.2008 passed by the learned Magistrate is not only improper, illegal but also incorrect on appreciation of facts as well as the application of law so as to warrant framing of charge against the present petitioners for an offence u/s 498A IPC.
31. Accordingly, all the four petitioners are discharged.
32. Copy of this order be sent to the learned Trial Court for the purpose of information.

**DECEMBER 21, 2009**  
**RN**

**V.K. SHALI, J.**