

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

% Date of reserve: 18.02.2009
Date of decision: 25.02.2009

+ Crl.M.C. 3072/2008

RAVI KUMAR Petitioner
Through: Mr.B.S.Chowdhary, Adv.

Versus

STATE (NCT) OF DELHI & ANR Respondents
Through: Mr.Arvind Kumar Gupta APP

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973(hereinafter referred to as Cr.P.C.) for quashing of FIR No. 38/2003 under Sections 498-A/406/34 of Indian Penal Code (I.P.C. in short), registered at Police Station, Kalkaji on 11-01-2003 and the criminal proceeding which are pending in the Court of Ms. Pinki, Metropolitan Magistrate, Mahila Court, New Delhi.
2. The petitioner during the pendency of the aforesaid criminal proceedings after the charges were framed preferred a revision petition against the order framing charges dated 26.09.2003 passed by

the Id. MM before the Sessions Court. The Ld. ASJ dismissed the same on 02.04.2004.

3. The present petition has been filed four years thereafter on the ground that that the allegations made by the complainant in her complaint does not makes out a case against him under section 498-A/ 406 IPC .
4. Briefly stating the facts of this case are that the marriage between Petitioner and Complainant was solemnized as per Hindu rituals and customs on 17.06.1997; out of their wedlock two children namely baby Pratiksha and master Mukul were born dated on 04.06.1998 and 26.03.2002; Pratiksha died on 20.09.2002. Thereafter on 23.09.2002 complainant left her matrimonial home and since then she is living at her parental home along with her son Mukul. It is on 07.05.2002 complainant lodged a complaint with CAW Cell Nanakpura against the petitioner on the basis of which aforesaid FIR was registered. After completion of investigation challan was filed and Ld. MM framed the charge on 26.09.2003 under section 498-A IPC against the petitioner.
5. It is submitted by the counsel for the petitioner that the allegations made by the complainant in her complaint regarding the misbehaviour of the family members against her and that she was tortured and subjected to cruelty due to which she got psychologically disturbed and left the matrimonial home on 23.09.2002 are not correct. It is submitted that the allegations are baseless and without any material evidence and therefore the present complaint was nothing but a malafide intention of the complainant with an ulterior

motive for wrecking vengeance of petitioner and for not maintaining the relationship.

6. It is also submitted that the said allegations does not constitute an offence under section 498-A IPC. He also states that no steps have been taken to record any evidence and that the proceedings are pending for a long time which itself shows that there is nothing with the prosecution to prove its case therefore the present proceedings are liable to be quashed.
7. It is important to take note of the relevant portion of the allegations made by the complainant in her complaint on the basis of which FIR no. 38/2003 dated 11.01.2003 was registered reads as under:

1. I, Garima Bundela W/o Ravi Kumar Bundela, wwhich marriage solemonized on 17.6.97 with Ravi Kumar Bundela s/o Sh. Kanhiya R/o B-138, East of Kailash, New Delhi as per Hindu rites and rituals.
2. My husband Ravi Bundela's parent Kanhiya Lal, Smt. Kastoori Devi, sisters Uma, Shashi, brother Kamal & sister in law (Bhabi) Kiran, whose behaviour is not good toward me from and instigate my husband against me that your wife is not moral, we will do your second marriage and harassed me psychologically.
3. My husband and relative made allegations upon me on petty issues.
4. Nobody was look -after to me at home in at the time of second delivery and my husband outside to the house for business concern. When I asked to my husband that after the birth of child, who will look after me, on this my husband telephoned to my mother for stay there to take care of me. Only my mother for look after me after delivery. My husband and his relatives whose reference has been made in Para. 2 above used to make disturbances at the instance of relatives. They used to say that returned back to your mother.
5. Sir, I have got stitches during delivery, which takes time for normalization.
6. Sir, my husband and his relative's attitude is cruel some towards me due to which I am mentally harassed. Hence, it is requested that please save me from mental

harassment and restrained my relatives from unethical behaviour so that I may lead Peaceful Life.

8. At this stage it may be appropriate to take note of section 498-A IPC, which reads as under :

498A. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

(a) Any willful 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; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.]

9. The petitioner in support of his case referred the judgments delivered by Apex Court in the case of Indian Oil Corporation Vs. NEPC India LTD. reported in 2006 SCC CrI. 188 and State of Haryana Vs. Bhajan Lal reported in JT 1990 (4) SC 650 . The petitioner also submitted a judgement delivered by this court in Sanjeev Kumar Aggawal & Ors. Vs. State and Anr. reported in 2007 (4) JCC 3074 where it was held as under :

10. Under Explanation (a) the cruelty has to be of such gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health.

11. Explanation (b) to section 498 A provides that cruelty means harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.

28. It is settled law that a complaint/ FIR can be quashed when allegations made in the complaint /FIR do not *prima facie* constitute any offence or make out a case against the accused.

10 Having gone through the judgment cited by the petitioner and having perused the complaint, I find that the allegations made by the complainant which is the basis of the FIR, squarely falls within the purview of explanation (a) to Section 498-A IPC and, therefore, *prima facie* makes out a case against the petitioner and it is not a case where the prayer made by the petitioner to quash the complaint/FIR being an abuse of the process of Court can be allowed.

11 Accordingly, the petition is dismissed. However, taking into consideration the facts of this case the trial Court is directed to expedite the proceedings.

12 Trial Court record, if received, be sent back immediately.

MOOL CHAND GARG,J

FEBRUARY 25, 2009