

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

Date of Reserve: August 02, 2010

Date of Order: 10th August, 2010

+ CrI. M.C. No. 799/2009

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10.08.2010

SUDHIR KAPUR & ORS.

..... Petitioner

Through: Mr.Sanjeev K. Grover, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. O.P. Saxena, APP

Mr. Pawan Narang & Mr. Puskal Gagoi,

Advs. for R-2

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. Present petition has been filed for quashing of FIR No. 540/07, registered against the petitioner at P.S. Defence Colony, under Section 498-A/406/34 IPC .

2. The marriage between the petitioner and the respondent had taken place on 4th March, 1984. The parties started living separate from each other in 1992. The petitioner filed a divorce petition against the respondent in 1996. The present FIR was lodged against the petitioner by wife under Section

498A/406 IPC after about 15 years of living separate from her husband and after about 11 years of filing the divorce petition.

3. It is argued by counsel for the respondent/wife that offence under Section 406 IPC was also involved and the dowry articles etc. of the wife were not given back. This averment has no substance. The wife had all opportunities right from 1992 onwards to demand back her articles, if any, lying with the husband. The very fact that wife did not demand any article from the husband after 1992 till lodging of FIR shows that there was no entrustment of property by wife to the husband or to his relatives. After husband had filed divorce petition, she had again opportunity to make an application before the concerned court under Hindu Marriage Act for the return of dowry articles, *Istridhan*, if any, under section 27 of the Act. Had there been any article lying with the husband, she would have moved the application. She did not initiate any such move, nor did she serve any notice on her husband or in laws for return of any of her articles lying with them. It is only when her appeal against the decree of divorce was dismissed by the High Court, and she preferred an SLP, she thought of lodging of an FIR also.

4. Under Section 468 of Cr. P.C., the cognizance of an offence where the maximum sentence of imprisonment is up to 3 years, can be taken within 3 years. Under Section 498A/406 IPC maximum sentence is up to three years imprisonment. Thus the cognizance of the offences against petitioner cannot

be taken by the Court. The FIR lodged against the husband in respect of offences committed under Section 498A/406 IPC in 1992 or prior to that, is barred by limitation. I, therefore, allow the present petition and hereby quash FIR No. 540/2007, P.S. Defence Colony, New Delhi, registered under Sections 498A/406/34 IPC. The petition stands allowed.

AUGUST 10, 2010
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SHIV NARAYAN DHINGRA, J.