

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 570/2010**

Decided on 16.09.2010

IN THE MATTER OF :

POMINDER KUMAR CHHABRA Petitioner
Through: Mr. Nitin Bhardwaj, Advocate

versus

THE STATE Respondent
Through: Mr. M.N. Dudeja, APP for the State

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 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 |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 397 readwith Section 401 of the Cr.P.C. assailing an order dated 18.08.2010 passed by the learned Additional Sessions Judge, dismissing the appeal preferred by the petitioner, husband of the complainant, against the judgment of conviction dated 31.03.2010 and the order of sentence dated 07.05.2010 passed by the learned Metropolitan Magistrate in case FIR No.208/1995, Police Station: Moti Nagar under Sections 406/498A/34 of the IPC, whereunder the appellant/accused was convicted for the offence under Section 498A of the IPC and sentenced to undergo simple imprisonment for a period of two years.

2. To encapsulate the facts of the case, the judgment reveals that Smt. Asha Devi lodged a complaint against her husband, the petitioner, her mother-in-law, Smt. Sita Rani, her father-in-law, Shri Manohar Lal Chhabra (since expired) and her brother-in-law, Shri Sanjay Kumar under Sections 406/498-A/34 of the IPC. After the investigations were completed, a charge-sheet was filed under Sections 406/498A/34 IPC against all the accused persons. Charges were framed against all the accused persons to which, they pleaded not guilty and claimed trial. During the proceedings, one of the accused, Shri Manohar Lal Chhabra expired. The prosecution examined nine witnesses, including the complainant, her father, Ram Das, her brother, Pritam Das. Thereafter, statements of the accused persons were recorded under Section 313 Cr.PC wherein, they denied the case as set up by the prosecution, but did not lead any evidence. After hearing both the parties, the learned Metropolitan Magistrate arrived at the conclusion that the complainant had suffered physical and mental cruelty at the hands of the accused and the prosecution was successful in proving the offence under Section 498A IPC against them. As a result, the petitioner and the other co-accused were convicted under Section 498A IPC. However, while the petitioner was sentenced to undergo simple imprisonment for a period of two years, the other two co-accused, namely, the mother and brother of the petitioner, were granted the benefit of Probation of Offenders Act, 1958 and released on probation with directions to maintain good behavior throughout the period of six months. Further, it was held that the offence under Section 406 IPC was not made out against any of the accused persons and they were acquitted for the said offence.

3. Aggrieved by the aforesaid judgment of conviction and order of sentence under Section 498A IPC, the petitioner preferred an appeal before the learned Additional Sessions Judge, who by the impugned judgment dated 18.8.2010, concurred with the findings returned by the learned MM and dismissed the appeal on the ground that there was no infirmity or illegality in the order of conviction and the order of sentence. The petitioner has filed the present revision petition against the aforesaid judgment.

4. Counsel for the petitioner assails the impugned judgment on three counts. First, he states that there is no evidence against his client for his conviction under Section 498A IPC. He next submits that both the courts below failed to appreciate the fact that while the marriage of the parties took place in the year 1993, the FIR was got registered by the complainant in the year 1995 and there was a long and unexplained gap between the two dates, which itself shows that the complaint was not genuine. Lastly, he submits that the impugned judgment is not a speaking order, but a mere reproduction of the findings returned by the learned Metropolitan Magistrate and hence it suffers from the vice of non-application of mind.

5. This Court has perused the records, including the testimony of the complainant dated 5.5.1995, the impugned judgment, the judgment of conviction and the order of sentence passed by the learned Metropolitan Magistrate. Before proceeding to deal with the submissions made by the counsel for the petitioner, this Court must take into consideration, the scope of interference by it, as a court of second appeal. It is settled law that the scope of interference by the High Court under Section 397 read with Section 401 Cr.P.C. is to peruse the record of any proceedings of the court below, examine the correctness, legality or propriety of any finding, sentence or

order, recorded or passed and as to the regularity of any proceeding of such inferior court and to pass appropriate orders. As held in the case of Krishnan and Another Vs. Krishnavni and another reported as **(1997) 4 SCC 241**, "...the revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice". The revisional power conferred on the High Court is therefore to be exercised sparingly, as the object of criminal trial is not only to render public justice and to punish criminals, but also to see that the trial is concluded expeditiously. However, the *suo motu* powers of the High Court cast a duty on it to examine records and if it is found that there is grave miscarriage of justice or abuse of the process of the court, or non-compliance of statutory procedure or failure of justice or requirement of correcting the order passed or sentence imposed thus meets the end of justice, the High Court is justified in exercising its inherent power in appropriate cases.

6. At the same time, re-appreciation of evidence for the purposes of determining whether the concurrent finding of facts reached by the learned Magistrate and the learned ASJ was correct, ought to be refused ordinarily. It has been observed by the Supreme Court in the case of State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand and others reported as **(2004) 7 SCC 659** as under:

"Para 21: In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High

Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 CrPC... (emphasis added)

Para 22: "22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Session Court. **Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers.** Section 401 CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power." (emphasis added)

7. Similarly, in the case of Manju Ram Kalita vs. State of Assam, reported as **(2009) 13 SCC 330**, the Supreme Court held as below :

"9. So far as issue No. 1 is concerned i.e. as to whether the appellant got married with Smt. Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. **It is settled legal proposition that if the courts below have recorded the finding of fact, the question of re-appreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. It's function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by re-appreciating the evidence.**

10. **This Court would not ordinarily interfere with the concurrent findings on pure questions of fact and review the evidence again unless there are exceptional circumstances justifying the departure from the normal practice.**

“8. The position may undoubtedly be different if the inference is one of law from the facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure.”

[Vide Firm Srinivas Ram Kumar v. Mahabir Prasad, **AIR 1951 SC 177**, Tulsi Das Khimji v. Workmen, **AIR 1963 SC 1007**, and Pentakota Satyanarayana and Ors. v. Pentakota Seetharatnam, **(2005) 8 SCC 67 : AIR 2005 SC 4362**]. Where the court below considered the material facts and did not take into consideration any inadmissible evidence etc., the interference is not required by court on third instance. (vide Madhavan Nair v. Bhaskar Pillai, **(2005) 10 SCC 553**)

11. **Thus, it is evident from the above that this Court being the fourth Court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material.** Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this court is required to be interfered with.”(emphasis added)

8. As regards the object and intention of incorporating Section 498A in the IPC, the said provision which was introduced by the Parliament by Act 46 of 1983 with a view to combat the menace of dowry deaths and harassment of woman at the hands of her husband or his relatives, is reproduced hereinbelow:

"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. For constituting of an offence under Section 498A IPC, the ingredients thereof must be held to be existing. They have been enumerated by the Supreme Court in Bhaskar Lal Sharma and another Vs.

Monica reported as **(2009) 10 SCC 604** as below: +

"29. Thus, the essential ingredients of Section 498A are:

- 1. A woman must be married,**
- 2. She must be subjected to cruelty,**
- 3. Cruelty must be of the nature of:**

(i) any willful conduct as was likely to drive such woman:

- a. to commit suicide;**
- b. cause grave injury or danger to her life, limb, either mental or physical;**

(ii) harassment of such woman,

(1) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or on account of failure of such woman or by any of her relation to meet the unlawful demand;

(iii) woman was subjected to such cruelty by;

(1) husband of that woman, or

(2) any relative of the husband.”
(emphasis added)

10. After setting out the essential ingredients of Section 498A, it was observed in the aforesaid case that for proving the offence under Section 498A IPC, the complainant must make allegations of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any willful conduct on the part of the accused 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 or of such a nature as to cause harassment of such a woman with a view to coerce her to meet the unlawful demand for any property or valuable security or on account of failure of such a woman or any person related to her to meet such unlawful demand, which resulted in the woman being subjected to cruelty by her husband and his relatives.

11. Cruelty has been defined in the Explanation added to the Section itself. The necessary ingredients of Section 498-A IPC are cruelty and harassment at the hands of the husband of the woman or his relatives. In the case of Girdhar Shankar Tawade Vs. State of Maharashtra reported as **(2002) 5 SCC 177**, the Supreme Court observed that the legislative intent is clear to indicate in particular reference to explanation(b) of the provision that there shall have to be a series of facts in order to prove harassment

within the meaning of explanation(b). Para 3 of the aforesaid judgment reads as below:

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures : **Whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."** (emphasis added)

12. Coming to the case in hand, it is an admitted case that the marriage of the petitioner was solemnized with the complainant on 30.11.2003. So there is no dispute that the complainant is the wife of the petitioner. For establishing cruelty, for the purpose of Section 498A IPC, it has to be seen that the complainant was subjected to cruelty continuously/persistently, or at least in close proximity of time from the date of lodging the complaint. [Refer: Girdhar Shankar Tawade (supra) and Manju Ram Kalita (supra)].

13. A perusal of the judgment of conviction passed by the Metropolitan Magistrate in the instant case shows that the prosecution produced nine witnesses, out of which the material witnesses were, PW-1, the complainant herself, PW-4 Ram Dass, father of the complainant, and

PW-6 Pritam Dass, brother of the complainant. However, the learned MM relied on the deposition of the complainant to indict the petitioner and the other co-accused. The testimony of the complainant has been referred to in para 4 of the judgment and the same has been analysed in paras 18 to 28. The complainant deposed that on 30.11.2003, she was married to the petitioner and sufficient dowry articles were given by her parents in the marriage, as detailed in the lists(Ex.PW-1/A and Ex.PW-1/B). After her marriage, PW-1 went to reside at her matrimonial home at Rohini, owned by the brother of the petitioner. Just after the marriage, she was taunted by her husband and her in-laws to the effect that she had not brought large gifts.

14. Incidents of harassment caused to PW-1 by the petitioner and the other co-accused started right from the date of marriage and continued till April, 1995 and were narrated by her in her testimony. The said incidents started occurring from 3.12.1993, i.e., two days after the marriage was performed, when her brother came to visit her matrimonial house, along with dowry articles. PW-1 deposed that on 1.12.1993, i.e., on the next day of the marriage, her in-laws taunted her for the meager dowry brought by her in the marriage, on 13.4.1994, i.e. on festival of Baisakhi, her mother-in-law demanded gold ear rings from the complainant and started fighting with her, while her brother-in-law, Sanjay gave her two-three slaps and the petitioner pulled her hair. On the day of Ekadashi, on 18.6.1994 when PW-1 along with her brother came to her matrimonial home with some fruits and sweets, the same were thrown on the road. On 10.12.1993 while shifting from Rohini to Sohan Ganj, all the jewellery articles received by the PW-1 as *istridhan* were taken away by her in-laws. After January 1994,

during the period of her pregnancy, PW-1 was not given sufficient food and turned away from her matrimonial home. In August 1994, for the first time the petitioner revealed to PW-1, the factum of his first marriage to a Christian lady 4-5 years ago, but despite repeated requests, refused to show her any documents of dissolution of his previous marriage. On 7.11.1994, PW-1 was admitted in the hospital and remained there for five days, till 11.11.1994, when a dead child was born, during which period, neither the petitioner, nor her in-laws came to visit her in the hospital. After 16.11.1994, PW-1 was discharged from the hospital to return to her matrimonial home, but the petitioner refused to take her back and declined her request to return her *istridhan*. PW-1 also deposed that the petitioner disclosed to her for the first time after the marriage that he was an epilepsy patient and had to take medicine on a daily basis and was undergoing treatment in JPN Hospital. Ultimately, when all talks between the parties and their families failed in April 1995, a written complaint (Ex.PW-1/C) was made by the complainant to the police in May 1995, wherein she levelled specific allegations of the manner in which she was subjected to cruelty and harassment by the petitioner and the other co-accused.

15. The testimony of PW-1 shows that she had made a series of specific allegations against her husband and her in-laws, to the effect that they had physically abused her on various occasions, taunted her for not bringing adequate dowry, deprived her of food and care during her pregnancy, did not permit her to return to her matrimonial home despite her repeated pleas, refused to return her *istridhan*, part of which was recovered later on from the matrimonial home, with the assistance of the police. Her allegations of physical and mental cruelty as set out in her testimony, have

not been satisfactorily rebutted by the accused. The learned Metropolitan Magistrate observed that the complainant had given all the details of the incidents of cruelty in her testimony, without there being any material discrepancy, and found her testimony to be reliable. Perusal of the lengthy cross-examination of the complainant conducted by the accused, spread over a period of three years, shows that her testimony remained unrebutted on material points and nothing relevant could be extracted from her, to shake her deposition. Rather, considering the fact that the incidents were of the years 1993 to 1995, PW-1 entered the witness box only in the year 1999 and was cross-examined between the year 2001 to 2003, she stood steadfast throughout her testimony and supported all that she had stated in her complaint made in the year 1995, to the CAW against the accused persons. The learned ASJ also took notice of the aforesaid position in para 11 of his judgment and held that merely because the testimony was of PW-1/complainant does not mean that it is insufficient and that conviction based on the testimony of a single witness or of the complainant alone, is also sufficient. Relying on the aforesaid testimony of the complainant alone and discounting the testimony of her father, PW-4 as one which was based on hearsay, the learned Metropolitan Magistrate rightly concluded that the accused persons were guilty of the offence under Section 498A IPC. It was also noted that the cruelty under Section 498A IPC is not only physical, but mental as well and in the present case, the complainant had suffered both, physical and mental cruelty at the hands of the petitioner and the other co-accused. In the light of the aforesaid findings, the contention of the counsel for the petitioner that there was no evidence on the record to convict the petitioner under Section 498-A IPC, is untenable and turned down. This

Court concurs with the conclusion of the learned ASJ that there was sufficient material placed on the record to convict the petitioner for the offence under Section 498-A IPC.

16. The submission of the counsel for the petitioner that the complaint is of the year 1995, whereas the marriage took place in the year 1993 and no complaint was ever made by the complainant after the marriage, has been dealt with by the learned Additional Sessions Judge in para 8 of the impugned judgment wherein, it is noted that the gap between the date of the marriage and the registration of the FIR is not so long that the complainant would have been able to make other complaints against the accused. Pertinently, records reveal that the marriage of the parties was solemnized on 30.11.1993 and till 20.4.1995, the parties continued to interact with each other and only thereafter, was the complaint made and the FIR was registered in the middle of the year, 1995. It is rightly observed by the learned ASJ that every person after his or her marriage, tries to save the same instead of running to make complaints. The aforesaid observation is neither illogical nor contrary to our societal norms. The fact that the complainant did not rush to the police or any other authority at the first opportunity to file a complaint against the accused persons cannot be held against her or be treated as a ground to discard her complaint as being dubious or *malafide*. In any case, the gap between the date of the marriage and the complaint is not so long or unreasonable so as to cast a shadow of doubt on the genuineness of the contents of the complaint or the intention of the complainant. It is therefore held that the cruelty to which the complainant was subjected, was in close proximity of the period when the complaint was lodged.

17. Insofar as the last contention of the counsel for the petitioner to the effect that the impugned judgment is a non-speaking one is concerned, a perusal of the impugned judgment dated 18.08.2010 running into six pages, shows that the learned Additional Sessions Judge carefully examined the record of the trial court and the judgment of the learned Metropolitan Magistrate before deciding the appeal. This is not a non-speaking judgment as sought to be urged by the counsel for the petitioner. Rather, the learned ASJ has sifted through the judgment, considered the submissions of both, the counsel for the appellant/petitioner as also the APP and after due application of mind, finally arrived at a conclusion that the impugned judgment of conviction dated 31.3.2010 and order of sentence dated 7.5.2010 did not suffer from any infirmity, perversity, arbitrariness or material irregularity, for inviting any interference by the Court. This Court is also of the same opinion. Having regard to the facts and circumstances of the case, it has to be concluded that the complainant was subjected to cruelty continuously, by the petitioner and the other co-accused and he was therefore liable to be punished under Section 498A IPC.

18. It may be noticed that as against the maximum punishment of 3 years and fine prescribed for an offence under Section 498-A IPC, the trial court has sentenced the petitioner to undergo simple imprisonment for a period of two years, which order has been upheld by the learned Additional Sessions Judge. In the facts and circumstances of the present case, this Court is not inclined to interfere with the concurrent judgment of the two courts below, as the same have been passed after carefully going through the evidence on the record. There is no material illegality, perversity or

miscarriage of justice in the impugned judgment, which calls for interference. The present petition is therefore dismissed as being devoid of merits.

SEPTEMBER 16, 2010
rkb/mk

(HIMA KOHLI)
JUDGE