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HIGH COURT OF DELHI : NEW DELHI

Order reserved on: August 26, 2011
Order pronounced on: September 23, 2011

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Crl. Rev. P. No. 271/2008

% **SHRI SURENDRA KUMAR** ... Petitioner
Through: Mr. S.K.Kalia, Mr.K.K. Bhalla &
Mr.K.N.Ahuja, Advocates

versus

STATE OF NCT OF DELHI ... Respondent
Through: Mr. Harsh Prabhakar & Ms.Laxmi
Chauhan, Advocates for
Mr.Pawan Sharma, Standing
Counsel (Crl.)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. For the offence of subjecting his wife to cruelty, petitioner has been convicted and sentenced by the courts below, which is under challenge in this petition.

2. Petitioner was married on 22.11.1986 to one Shashi, who is the complainant/ first-informant of FIR No. 130/1994, under Sections 498A/406/34 of the Indian Penal Code, registered at Police Station Krishna Nagar, Delhi. The grievance of the complainant/ first-informant-Shashi has been that after one year

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of the marriage, petitioner used to pick up fights with her on account of bringing less dowry and on many occasions, she was beaten by the petitioner. It is the assertion of the complainant/first-informant-Shashi that on 3rd August, 1993 and again on 10th February, 1994, she was treated cruelly by the petitioner but on both the occasions the matter was settled between them, however later on.

3. What made petitioner's wife-Shashi to lodge the complaint against the petitioner is the incident on 11th April, 1994. On that day, in the night the petitioner in inebriated condition came back home and at that time the complainant was listening to music on tape recorder and the petitioner without any rhyme or reason pulled out the electric wire of the tape-recorder and started beating his wife with it and thereby had caused injuries on her head and other parts of the body. She was medically examined and thereafter, upon her statement FIR of this case was registered against the petitioner, in which allegations of misappropriation of dowry etc. were also levelled against the petitioner.

4. At trial, charges framed under Sections 406/498-A/34 of the Indian Penal Code against the petitioner, his mother and brother, were contested. Upon recording of the evidence of the complainant/first-informant- Shashi (PW-3), of her mother Ramditi (PW-4), her cousin Kanchan (PW-5), her brother Kulbhushan (PW-7) and that of Dr.V.P.Arya (PW-2), who had medically examined her on the day of the incident i.e. 11th April, 1994 and that of the Investigating Officer- SI H.R.Veena (PW-6), incriminating evidence, which had emerged on record was put to the petitioner/accused, who had denied the same and had asserted that in order to avoid the repayment of loan of ₹3,00,000/-

advanced by him to the family of complainant/first-informant-Shashi, a false case has been foisted upon the petitioner and the complainant is an abnormal lady.

5. The trial concluded with the conviction of the petitioner for the offence under Section 498-A of the Indian Penal Code. Trial Court had sentenced the petitioner to rigorous imprisonment for three years with fine of ₹5,000/-, which was challenged in appeal. The Appellate Court, finding no substance in appeal vide impugned order of 23rd April, 2008, had upheld the conviction of the petitioner for the offence under Section 498-A of the Indian Penal Code but had reduced the substantive sentence to rigorous imprisonment for 1½ years.

6. In this revision petition, the conviction of the petitioner/accused is assailed on merits and at the hearing learned counsel for the petitioner/accused had relied upon the decisions reported in '*Bhaskar Lal Sharma & Anr. Vs. Monica*' (2009) 10 SCC 604; '*Sanjeev Kumar Aggarwal & Ors. Vs. State & Anr.*' II (2009) DMC 457; '*Narender Kumar & Anr. Vs. State (Govt. of NCT of Delhi)*' 2008 (1) JCC 1; '*Majhan @ Papoo & Ors. Vs. State*' 96(2002) DLT 566 and '*Amitabh Adhar & Anr. Vs. NCT of Delhi*' 2000 FLC 313, to contend that conviction of the petitioner for the offence under Section 498-A of the Indian Penal Code is clearly unsustainable, as the alleged previous acts of cruelty were condoned by the complainant and a compromise was arrived at between the petitioner and the complainant prior to the incident of 11th April, 1994 and thereafter she was happily living in her matrimonial house.

7. As regards the incident of 11th April, 1994, it is contended by petitioner's counsel that even if it is taken that the said incident had taken place, offence committed would not come within the ambit of Section 498-A of the Indian Penal Code and at

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best, the offence was committed by the petitioner on the said day would come within the purview of Section 323 of the Indian Penal Code and for the said offence, the sentence of about a month or so already undergone by the petitioner would meet ends of justice, as a long period of about 16 years has elapsed since this incident took place and during the intervening period, divorce between the petitioner and the complainant has already taken place and the petitioner has remarried and is taking care of his two minor children born out of wedlock with the complainant. Thus, the prayer made on behalf of the petitioner is for taking a lenient view in this matter.

8. On behalf of the respondent-State, endeavor was made to persuade this Court to sustain the impugned judgment. After having heard both the sides and upon perusal of the record of this case, I find that it is not in dispute that the previous acts of cruelty were condoned but on the assurance that the petitioner would treat his wife, i.e., the complainant with respect and dignity but instead thereof, subsequent to the compromise arrived at between the parties, the petitioner had again subjected his wife to a severe cruelty i.e. the incident of 11.4.1994 which had compelled petitioner's wife to take appropriate step of lodging a police complaint against the petitioner. In the first information report, petitioner's wife had not only confined to the cruelty aspect pertaining to the incident of 11.4.1994 but had also highlighted the acts of cruelty which were committed upon her by the petitioner on prior two occasions. Infact, the deposition of the complainant/first informant – Smt.Shashi (PW-3) reveals that she was subjected to cruel treatment mainly by the petitioner and the said cruel treatment was on account of bringing less dowry and was not confined to a particular incident.

It was a continuing affair.

9. The two occasions highlighted by her in her deposition are of 3.8.1993, when she was given beating by the petitioner not only for not bringing enough dowry but also on account of not giving birth to a child and she had told her parents about this incident and with their intervention, the matter was compromised. Again on 10.02.1994, petitioner had beaten the complainant and the occasion was no different than the first one, which had impelled the petitioner to thrash his wife. Thereafter, with the intervention of the relatives the matter was again compromised. It was on the third occasion, when complainant was severely beaten by the petitioner requiring treatment at a hospital, complainant had left her matrimonial house and had gone to her parental house and thereafter this criminal case was registered against the petitioner.

10. A scrutiny of evidence of the complainant (PW-3) would reveal that she had been subjected to extensive cross-examination by the defence but her deposition pertaining to the 3 incidents of cruelty remain unshaken. What was suggested to her in her cross-examination was that she is falsely implicating the petitioner because the parents of the complainant had taken loan of ₹3,00,000/- and to avoid its return this case has been falsely lodged against the petitioner.

11. During the course of hearing, it was urged on behalf of the petitioner that the deposition of Smt. Ramditi (PW-4) mother of the complainant contradicts the testimony of the complainant (PW-3), but it was not highlighted in what manner. Upon scrutiny of the deposition of the complainant (PW-3) as well as of her mother (PW-4), I find no contradiction inter se their evidence and

infact, I find that the deposition of the complainant (PW-3) stands substantially corroborated from the deposition of her mother (PW-4) to whom it has not been suggested that the petitioner has been falsely implicated in this case to avoid repayment of alleged loan of Rs.3 lac.

12. At the hearing it was urged that deposition of Kanchan (PW-5) relative of the complainant is hearsay. It is true that she is not a witness to the incident of 11.4.1994 and she could not have been the witness to the said incident as it had taken place in the matrimonial house of the complainant. Even if the deposition of this witness (PW-5) is excluded from consideration, still there is evidence of the complainant (PW-3) herself which has been found to be reliable and it receives ample corroboration from the evidence of her mother (PW-4) and of her brother (PW-7).

13. In the face of the afore-referred evidence, the stand of the petitioner of being falsely implicated by the complainant's father and brother to avoid the repayment of loan is clearly implausible, and does not stand substantiated nor the plea of complainant, (PW-3) being abnormal has any substance in it. Thus, I find that the courts below have rightly discarded the above said stand of the petitioner. I find it unacceptable that upon compromise of a matrimonial discord arising out of cruel treatment being meted out to the wife, the earlier incidents of cruelty would get washed away. This would amount to giving a license to the husband to act with cruelty after earlier incidents of cruelty have been condoned by a battered wife, hoping that her errant husband would learn a lesson and would not repeat the past mistakes. To hold that a compromise would wipe away the previous acts of cruelty, would send a wrong message to the matrimonial world which is likely to prove counterproductive. Thus, I find that the

plea of counsel for the petitioner of earlier acts of cruelty being excluded, upon being condoned, is preposterous. Such a view cannot be countenanced even in view of the decisions cited by the petitioner's counsel.

14. It is equally unacceptable that the conduct of the petitioner criminally assaulting his wife with an electric wire and thereby causing *1x1 inch hematoma on left parietal bone of skull and 1x1 inch hematoma on left parietal bone of skull* would not amount to causing of a grave injury to the limb or health (mental or physical) of the complainant. Thus, assertion of petitioner's counsel that the offence committed would not come within the sweep of Section 498-A of IPC and if at all, it would be any other offence under the IPC, cannot be countenanced for the reason that there are two limbs of Section 498-A of IPC, the first one is of the wilful conduct and the second one is of harassment of a wife with a view to coerce her to bring more dowry or ill-treat her for bringing inadequate dowry.

15. Upon having considered this matter with its entirety, I hold that the previous acts of cruelty upon being condoned, do not get washed away and thus it can be very well said that the petitioner had been subjecting his wife to cruelty on account of insufficient dowry and had also criminally assaulted her requiring medical treatment at a hospital. Undoubtedly, the offence committed by the petitioner clearly comes within the ambit of Section 498-A of IPC and the courts below have rightly convicted the petitioner for the said offence.

16. Although there is no scope of any interference with the impugned judgment on merits, but on the quantum of sentence, I find that the appellate Court has given 50% reduction in the substantive sentence upon finding that after being divorced from

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the complainant, petitioner is maintaining his two minor children born out of the wedlock with the complainant and of petitioner being remarried subsequently. Perhaps, petitioner's detention in jail just for a week was not found sufficient by the appellate Court to have reduced the substantive sentence to the period already undergone, but it stands reflected from the Order of 27.5.2008 of this Court that by then, the petitioner had remained behind bars for about 40 days.

17. Noting that for the offence under Section 498-A of IPC, no minimum sentence is prescribed, it would be indeed not in the interest of the children of the petitioner to now send the petitioner behind bars after about 16 years of this incident. Therefore, in the peculiar facts of this case, I find that the ends of justice would be met if the substantive sentence of about one and half years is reduced to the period already undergone by the petitioner, subject to enhancement of fine from ₹5,000/- to ₹25,000/-. In the event of default of the petitioner in depositing the enhanced fine of ₹20,000/-, he shall have to undergo the simple imprisonment for a period of six months. Trial Court to ensure compliance of this order forthwith. The enhanced fine, upon realization, be disbursed as compensation to the complainant- Smt. Shashi (PW-3) by the trial court.

18. With modifications, as aforesaid, this petition is disposed of.


Sunil Gaur, J.

September 23, 2011
rs/pkb