

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

+ CRL.REV.P. 307/2008

Date of Decision: 26.05.2011

ONKAR NATH TIWARI Petitioner
Through: Mr.Tripurari Tiwari, Adv.

versus

STATE Respondent
Through: Mr.O.P.Saxena, Adv.

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(Oral)**

1. This is a Criminal Revision Petition filed by the petitioner against the order dated 15.04.2008 passed by the learned ASJ directing framing of charge against the petitioner under Section 498A IPC. Briefly stated, the facts of the case are that the deceased, Seema was married on 27.06.2004 to Purankar Nath Tiwari, younger brother of Onkar Nath Tiwari, the present petitioner. On 17.12.2005, husband of the deceased Seema was killed by his own father. After the death of brother of the petitioner, the deceased with the help of one S.N. Dubey married Naresh S/o Sh. Ram Chander on 06.03.2007. From the impugned order, it transpires that the parents of the deceased were not aware about the factum of the second marriage. They were informed about this at New Delhi Railway Station, when they were called by the deceased. Thereafter, father of the deceased Hari Shankar Pandey and mother Smt.

Shanti Devi purported to have visited the house of second husband
Crl.Rev.P.307/2008 *Page 1 of 6*

where a sum of Rs.30,000/- is alleged to have been demanded by the second husband, Naresh. On 01.07.2007, i.e., just after about four months of her second marriage, the deceased committed suicide. Naresh tried to cremate the deceased, when the police learnt about the same, it prevented him from cremating the body and registered a case under Section 304B/498A read with Section 201 of the IPC. This case was registered on the basis of statements purported to have been made before the SDM by Hari Shankar Pandey and Smt. Shanti Devi, the parents of the deceased. It is in these statements that Hari Shankar Pandey is purported to have also implicated Onkar Nath Tiwari, the brother of the first husband of the deceased. It was alleged that Onkar Nath Tiwari had brought the deceased to Kapurthala to their house after the death of her first husband but did not permit the deceased to meet him and on the contrary made a demand of dowry of Rs.50,000/-. This is stated to have happened in December, 2006 and on the basis of this, it is alleged that offence under Section 498A IPC is also made out against the present petitioner also. Onkar Nath Tiwari and Naresh, the second husband of the deceased were sent for trial for offences under Section 498A/304B/201 IPC by the local police.

2. The learned Additional Sessions Judge vide order dated 15.04.2008 discharged Onkar Nath Tiwari of the offence under Section 304B and 201 IPC by observing that he was not the relative of the second husband, Naresh and, therefore, could not be charged of the offence under Section 304B and 201 IPC. However, learned ASJ directed framing of charge against the petitioner under Section 498A IPC on the ground that being the relative of the first husband, he had committed an

offence under Section 498A IPC.

3. The petitioner feeling aggrieved by the aforesaid order has preferred the present revision petition assailing the said order.

4. I have heard learned counsel for the petitioner as well as learned APP for the State.

5. Section 498A of the Indian Penal Code 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.”

6. A perusal of the aforesaid Section clearly shows that not only the husband but his ‘relative’ can also be charged and tried for offence of demand of dowry, if a woman is subjected to cruelty, torture with a view to extract the same. The word ‘relative’ is one who is related to husband of the deceased. In this particular case, the question which arises for consideration is as to whether the brother of the first husband (since deceased) can be said to be relative of the husband when admittedly the lady (who has died) had married for the second time.

7. It was contended by the learned counsel for the petitioner that the very fact that the deceased after the death of her first husband had contracted the second marriage shows that the relationship of the present petitioner qua the deceased had ceased to exist and by no stretch of imagination at the time of registration of the offence i.e. on 4-5/07.2007, the petitioner could be said to be a relative of the deceased much less it could be said that he had demanded dowry.

8. So far as the later aspect is concerned, it has been further contended by the learned counsel that even if the allegations which are

purported to have been made by the father of the deceased, Hari Shankar Pandey belatedly after the death of the deceased, it would clearly show that there was no prima facie satisfaction of the ingredients of Section 498A IPC. Section 498A IPC clearly lays down that the women must have been subjected to cruelty or torture with a view to extract dowry from her or her parents. While in the instant case, the allegations were that after the death of the first husband of the deceased, Onkar Nath Tiwari had taken the deceased to Kapurthala and stated to the father of the deceased, Hari Shankar Pandey that he will not be permitted to see his daughter unless and until he pays a sum of Rs.50,000/-. Assuming though not admitting this allegation to be correct, it clearly shows although prima facie a demand might have been made to the father of the deceased, but there was no allegation of cruelty or torture qua the deceased and, therefore, on merits also the charge against the present petitioner could not be framed.

9. Learned APP has contested the claim of the present petitioner by alleging that since the trial Court has taken a prima facie view of the matter, there is no pressing urgency for disturbing the said prima facie view in criminal revision and the petitioner ought to face the trial.

10. I have carefully considered the submissions made by the respective sides and gone through the records. I find some force in the contention of the learned counsel for the petitioner that as the petitioner admittedly was elder brother of the husband of the deceased who had died on 17.12.2005 and thereafter, the deceased having contracted the second marriage on 06.03.2007, it brought about cessation of relationship between the present petitioner and the deceased. Therefore, the FIR

having been lodged on 4-5/07/2007, it could not be said that the petitioner was a relative of the husband of the deceased at the point of time and, therefore, a charge under Section 498A IPC could not have been framed against the petitioner. So far as the petitioner being a relative of the second husband is concerned, the learned Trial Court has already held that he could not be treated as a relative of the second husband.

11. In addition to this, the allegations which even if assumed to be correct, seem to be totally made out of desperation which obviously any parent, who has lost his daughter would do. There was absolutely no justification that if any such demand was made immediately after the death of the first husband of the deceased in December, 2006 why the same has not been reported to the police by the father of the deceased. The belated allegations which have been made also seem to be made out of disgust with a view to see that unfortunate demise of the daughter is avenged by the distraught father by punishing not only the perpetrators of the crime but also the family members of the first husband whose life itself was brought to end by his own father.

12. The Apex Court repeatedly in various judgments has held that putting a criminal justice machinery into motion ought not be done in a casual manner as it impairs the liberty of a person and the slow pace with which the criminal trials proceed further compounds the agony, torture and mental harassment of the person, who has to face prolonged trial before earning an acquittal and by the time acquittal is earned, a great deal of damage is done not only to the person concerned but also to the system inasmuch as it brings bad name to it. Reliance is placed in

this regard on the judgment delivered in *Pepsi Food Ltd. & Anr. Vs. Special Judicial Magistrate*, **1998 (5) SCC 749** and *Punjab National Bank & Anr. Vs. Surendra Pd. Sinha* **AIR 1992 SC 1815**

13. I feel the present case is one of such cases where by putting the present petitioner to trial for an offence under Section 498A IPC being the relative of the first husband who has already died and yet being charged for an offence under Section 498A IPC when the deceased had admittedly contracted second marriage would be only putting the present petitioner to a great deal of harassment and torture of facing a criminal trial.

14. For the above mentioned reasons, I feel by the learned trial Court has erred by directing framing of charge under Section 498A IPC against the present petitioner as there is no sufficient ground for proceedings against the petitioner under Section 498A IPC and accordingly, the order dated 15.04.2008 deserves to be set aside and the petitioner is discharged.

15. A copy of the order be sent to the trial Court.

V.K. SHALI,J

MAY 26, 2011

anb