

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

+ **CRL.REV.P. 366/2011 and Crl. M.A. No. 9643/2011 (Stay)**

% Reserved on: 24th April, 2012
Decided on: 6th July, 2012

RAKESH CHANDRA ARYA & ANR Petitioner
Through: Mr. Sanjib Kandayatray, Advocate.
versus

STATE & ANR Respondents
Through: Mr. Manoj Ohri, APP for the state.
Mr. Rahul Sharma, Advocate for
Respondent No. 2.

+ **CRL.REV.P. 372/2011 and Crl. M.A. NO. 9713/2011 (Stay)**

TARUN CHANDRA & ORS Petitioners
Through: Mr. Sanjib Kandayatray, Advocate.
versus

STATE & ANR Respondents
Through: Mr. Manoj Ohri, APP for the state.
Mr. Rahul Sharma, Advocate for
Respondent No. 2.

+ **CRL.M.C. 2647/2011 and Crl. M.A. No. 9456/2011 (Stay)**

JEET RAM & ANR Petitioners
Through: Mr. Sanjib Kandayatray, Advocate.
versus

STATE & ANR Respondents
Through: Mr. Manoj Ohri, APP for the state.

Mr. Rahul Sharma, Advocate for
Respondent No. 2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioners are aggrieved by the order of the Learned Trial Court dated 18th July, 2011 whereby charge for offence under Section 498A/34 IPC has been framed against all the Petitioners and in addition charge under Section 315/34 IPC has been framed against Petitioners Tarun Chandra and Pushpa, the husband and sister-in-law of the complainant.

2. Learned counsel for the Petitioner contends that on the allegations as set out in the FIR and on the basis of MLC, no case for charge under Section 315/34 IPC is made out against the Petitioners Tarun Chandra and Pushpa. The complainant was suffering from Hypothyroidism which resulted in abortion. The miscarriage took place when the complainant was at her parents place much after she had left the matrimonial home. The Doctor has been examined as PW-1 who has stated that the injuries mentioned in the MLC are not sufficient for termination of pregnancy. As regards offence under Section 498A/34 IPC, it is alleged that all members of the family have been implicated without any specific role being assigned to them. On the allegations in the FIR, no charge under Section 498A/34 IPC can be made out. Reliance in this regard is placed on *Onkar Nath Mishra & Ors. Vs. State & Anr. (2008) 2 SCC 561*.

3. Learned APP on the other hand contends that there are specific allegations against the Petitioners and the role of each Petitioner has been stated in the FIR and the statements recorded during investigation. The

statement of PW-1 Dr. Deepti Bhalla cannot be looked into as this Court will only see the evidence available with the Learned Trial Court at the time of passing of the impugned order. The benefit of the statement of PW-1 would be available to the Petitioners at the end of the trial and in case no offence under Section 315/34 IPC is made out, the Petitioners will be acquitted of the said charge. There can be no piece-meal appreciation of the evidence. The allegations of the complainant prima facie show that offence under Section 498A/315/34 IPC were committed. There being no infirmity in the impugned order the petitions be dismissed.

4. I have heard learned counsel for the parties. FIR No. 272/2006 was initially registered under Sections 498A/406/34 IPC and Section 315 IPC was also added subsequently. After hearing learned counsel for the parties the Learned Trial Court vide the impugned order dated 18th July, 2011 directed and framed charge under Sections 498A/34 IPC against all the Petitioners and charge under Section 315/34 IPC against the Petitioners Tarun Chandra and Smt. Pushpa. The Petitioners have been discharged for offence under Section 406/34 IPC. The complainant/ Respondent No.2 has alleged that her father spent more than 5 lakh rupees in the marriage. Despite the amount spent on wedding, on the second day of the marriage in the matrimonial home, her in-laws started harassing her on the pretext of bringing lesser dowry. On the third day of the marriage her brother came by which time, the complainant had been tortured on one pretext or the other for bringing less dowry. On her explaining this to her brother, her father came to the matrimonial home and gave Rs. 50, 000/- along with a water motor pump. Despite the complainant's father fulfilling the demands, the in-laws

continued criticizing her for bringing less dowry. The Petitioners Vijay Chandra, Lalita and Rakesh instigated her husband Tarun Chandra on every occasion stating that he had been trapped to marry in a poor family. They further instigated him to marry a second time and arrange for a better dowry. Basanti, Lalita, Rakesh and Vijay Chandra instigated her husband to assault till the complainant did not bring dowry, on which the husband Tarun Chandra used to assault her with punches and kicks. It is further alleged that on 8th July, 2005 at about 9/10 AM her husband badly assaulted her with punches and kicks in the presence of Petitioners Lalita, Rakesh and Basanti. Nobody saved her, rather they also supported him. On 20th November, 2005 the complainant was brought to Delhi where she stayed at the house of Petitioners Jeet Ram and Pushpa, where Jeet Ram, Pushpa and their son Mayank and her husband tortured her. She asked them to send her back to her parental home, however she was not permitted. It is further alleged that all these persons assaulted her on 9th January, 2006. Despite knowing that the complainant was pregnant, on 6th February, 2006 at about 11/11.30 AM her husband Tarun Chandra and sister-in-law Pushpa badly assaulted her and her husband kicked at her abdomen and threw her out of the house. She further stated that her jewellery and istridhan were in the possession of the in-laws. She was admitted to the hospital till 10th February, 2006, however on 20th February, 2006 she suffered a miscarriage.

5. In *Onkar Nath Misra* (supra) the Hon'ble Supreme Court held that on the basis of complaint dated 8th November, 1994 there was no whisper of any willful conduct of the Appellants therein for harassment of the complainant with a view to coerce her to meet any unlawful demand so as to attract the

provisions of Section 498A IPC. The only allegation of demand of Rs. 50,000/- and VCR was a belated one which came in the subsequent complaint dated 4th April, 1995 and thus was clearly an after-thought and not bona-fide. In the present case the allegations as set out above have been narrated by the complainant in her first complaint itself. Hence, I find no merit in the contention of the learned counsel for the Petitioner that there is no allegation of cruelty in relation to demand of dowry.

6. A perusal of the complaint and the statement of witnesses including supplementary statement of the complainant prima facie shows continuous harassment by the in-laws and the role of each of the Petitioner role has been specifically stated. Hence I find no infirmity in the order framing charge under Section 498A/34 IPC against the Petitioners.

7. As regards offence under Section 315/34 IPC, the complainant has alleged that she was kicked and assaulted by her husband Tarun Chandra and sister-in-law Pushpa. As per the MLC recorded on 6th February, 2006 the Petitioner suffered abrasion. The MLC also notes the history of assault by husband on that day on right lower back and right lower abdomen. The MLC also gives history of spotting and being treated at Rohini hospital on 30th January, 2006 receiving treatment of threatened abortion. As per the nature of injury opined it is stated there is no obvious injury from gynaecological or obstetric point of view and ongoing pregnancy was fine on 7th February, 2006. Though the subsequent testimony of PW-1 Dr. Deepti Bhalla cannot be taken into account, however from the MLC on record it is apparent that even after the alleged assault on 6th February, 2006 the pregnancy of the complainant was fine and prior to 6th February, 2006 also

the complainant was taking treatment in regard to complications that were arising. Thus, even accepting the version of the complainant that the husband Tarun Chandra and Pushpa assaulted her on 6th February, 2006 as per the MLC the assault did not result in miscarriage of foetus. Hence the Petitioners Tarun Chandra and Pushpa are not liable to be charged for offence under Section 315/34 IPC. Consequently, the impugned order to the extent framing charge against Petitioners Tarun Chandra and Pushpa for offence under Section 315/34 IPC is set aside.

8. Petitions and applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JULY 06, 2012
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