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

+ CRL.M.C. 3761/2012

GAURAV THAPER & ORS. Petitioners

Through: Mr.V.Shukla, Advocate

versus

STATE THR. GOVT. OF NCT OF DELHI Respondent

Through: Ms.Rajdipa Behura, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J (ORAL)

Crl.M.A.No.18248/2012 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 3761/2012 & Crl.M.A.No.18247/2012

1. Petitioner No. 1 is husband of the complainant whereas petitioner Nos. 2 and 3 are parents of petitioner No. 1. The petitioners are invoking inherent jurisdiction of this Court u/s 482 Cr. P.C. for quashing of FIR No. 192/2008, P.S. Roop Nagar registered against them for committing the offence punishable under Section 498A/406/34 IPC.
2. The charge-sheet has already been filed against the petitioners and after hearing the parties on the point of charge, the learned Trial Court was of the view that prima facie a case for framing charge for the offence punishable under Section 406/498A/34 IPC against all the petitioners was

made out. Hence they were ordered to be charged for committing the offence punishable under Section 498A/406/34 IPC.

3. Feeling aggrieved, the order dated 19.12.2011 passed by learned M.M. was impugned before learned ASJ by way of Revision Petition No.29/2012, contending that there was no evidence on record to even prima facie form a view that petitioners have committed the offence under Sections 498A/406/34 IPC as the complainant failed to place on record the supporting documents/ bills and not only that even as per the MLC of the complainant, she absconded from the hospital and did not make any statement before the Investigation Officer at that time. In the letter addressed to the SHO by the complainant, she admitted having received all her dowry articles. Thus there was no dispute left between the parties and despite that charge has been framed against the petitioners. Learned counsel for the petitioners has submitted that learned ASJ failed to consider all these aspects while dismissing the revision petition thus compelling the petitioner to invoke inherent jurisdiction of this Court for quashing of the FIR.

4. I have heard Sh. V.Shukla learned counsel for the petitioner and Ms.Rajdipa Behura, APP for the State.

5. The petitioners have made almost identical submissions before this Court, as raised before the learned ASJ. When learned counsel for the petitioners was questioned that in the garb of CrI.M.C. in fact he is filing second revision petition which is not permissible, placing reliance on ***Shakson Belthissor v. State of Kerala & Anr.***(2009) SLT 484 it was submitted that petitioners can approach this Court under Section 482 Cr.P.C. for quashing of FIR at the stage of charge.

6. I have considered the submissions made by the learned counsel for the

petitioners. Reliance placed on *V-(2009) SLT 484 Shakson Belthissor vs. State of Kerala and Anr.* by learned counsel for the petitioner is of no help to him for the reason that in that case, whether or not in the FIR filed and in the charge sheet, a case of Section 498A IPC was made out or not, was an issue required to be answered in the appeal. After discussing as to what constitutes cruelty for the purpose of Section 498-A IPC and examining the facts of the case, it was concluded that the contents of FIR or the chargesheet do not constitute prima facie case as narrated in Explanation 'A' to Section 498-A IPC. It was only on finding that Explanation 'A' to Section 498-A IPC was not attracted in the facts of the case that FIR and the chargesheet were quashed.

7. The learned ASJ in the impugned order dated 2.5.2012 referred to the statement of the complainant and other witnesses which contained the allegation of demand of dowry as well the cruelty meted out at the hands of petitioners. While dealing with the contentions of learned counsel for the petitioners that in the letter addressed to the SHO, the complainant has mentioned that she has already received her jewellery articles, the statement of the complainant that she was forced to write that letter to the SHO though in fact she had not received all her dowry articles was taken into account. While dismissing the revision petition, learned ASJ was of the view that credibility and veracity of the statement of the witnesses was yet to be tested and even strong suspicion is sufficient to frame the charge.

8. At this stage, suffice it to say that if the complainant was made to write a letter to the SHO regarding her satisfaction in respect of return of dowry articles and that no dispute was left between the parties, which she disowned by making another statement claiming that she was forced to write

in that manner, this Court in exercise of inherent jurisdiction cannot quash the criminal proceedings without giving an opportunity to the prosecution to prove its case. Learned APP for the State has referred to the statement of the complainant stating the instances of the cruelty and failure of the petitioner to return the dowry articles despite demand.

9. After considering the numerous judgments, in the case ***Sajjan Kumar vs Central Bureau of Investigation, JT 2010 (10) SC 413***, the Apex court laid down the following guidelines to be considered by the Courts while framing charge :-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

10. The Court has to consider the broad probabilities of the case, total effect of the evidence as well basic infirmities, if any. If after considering the matter, an opinion can be formed that accused might have committed the offence, charge can be framed. It is only in a case where after considering the material, the Court finds the charge to be groundless, that accused can be discharged.

11. In my view, the learned ASJ has taken into account all the relevant material while affirming the order of learned MM directing the accused to face trial in a case under Section 406/498-A/34 IPC. It does not appear to be a case to be closed at the stage of charge.

12. It is pertinent to note that in the garb of CrI.M.C. under Section 482

Cr.P.C impugning the order passed by the learned ASJ in Criminal Revision No.29/2012 is a second revision petition which is barred under Section 397(3) Cr.P.C. being filed by the same persons, who had already invoked the revisional jurisdiction of the Sessions Court. This Court cannot act as the second revisional Court in the garb of exercising inherent power. A Division Bench of this Court in W.P.(Crl.) No.80/2010 Anur Kumar Jain vs. Central Bureau of Investigation has observed as under:-

“(e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh (supra), Vishesh Kumar (supra), Khalil Ahmed Bashir Ahmed (supra), Kamal Nath & Others (supra), Ranjeet Singh (supra) and similar line of decisions in the field.

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a “cloak of an appeal in disguise” or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice.”

13. The learned ASJ exercised the discretionary power vested in the Court in exercise of revisional jurisdiction on sound principle duly appreciating that at the stage of framing of charge only a prima facie view is required to be taken and not that whether the evidence to be adduced is sufficient to base the conviction.

14. This Court in exercise of power under Section 482 Cr.P.c. will not dwell into the matter for the purpose of sifting the evidence and venture into a mini trial and cannot act as if it was a trial judge as only satisfaction about existence of sufficient grounds for framing of charge is to be recorded. It is

definitely not for this Court to form an opinion at this stage to appreciate the evidence and conclude whether the material placed on record by the prosecution is sufficient to form basis of the conviction.

15. In the case *State of Haryana v. Bhajan Lal* AIR 1992 SC 604, the Apex Court has dealt with the category of cases where the power vested in the High Court u/s 482 Cr.P.C. can be exercised to prevent abuse of process of law to secure the ends of justice with a note of caution that the power should be exercised sparingly and that too in rarest of rare cases.

16. In view of the above, the prayer of the petitioner to quash the FIR and proceedings emanating therefrom is liable to be dismissed and the same is accordingly dismissed.

PRATIBHA RANI, J

OCTOBER 31, 2012 'st'