

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

**RESERVED ON : 9th JULY, 2013
DECIDED ON : 24th SEPTEMBER, 2013**

+ CRL.M.C. 1496/2013 & CRL.M.A. 4708/2013 (Stay)

BRIJESH KUMAR GUPTA Petitioner

Through : Mr.D.C.Mathur, Sr. Advocate with
Mr.Shukhvinder Singh & Mr.Sitab
Ali Chaudhary, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondents

Through : Mr.M.N.Dudeja, APP.
Mr.Maninder Jeet Singh, Advocate
for Respondent No.2.
SI Amit Rathel, PS Model Town.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Brijesh Kumar Gupta (the petitioner) seeks quashing of FIR No. 355/2011 under Sections 498A/406/34 IPC registered at PS Model Town, Delhi on the complaint of respondent No.2 – Shikha Gupta. She has contested the petition.

2. I have heard the learned Senior Counsel for the petitioner and counsel for the respondent No.2 and have examined the record. The petitioner was married to respondent No.2 on 29.10.2009 and after

marriage, they lived together at matrimonial home, FU-40, Pitam Pura, Delhi in a joint family. Relations became strained and on 01.04.2011 respondent No.2 left the matrimonial home. She lodged complaint dated 02.04.2011 in Crime Against Women Cell (CAW Cell). After attempts to reconcile the differences did not materialize on the recommendations of CAW Cell, FIR was registered against the petitioner and his parents on 29.08.2011 under Sections 498A/406/34 IPC. The matter was investigated and a charge-sheet was submitted in the Court without effecting arrest of the petitioner and his parents. Learned Senior Counsel argued that the FIR has been lodged with ulterior motive and the allegations levelled therein do not make out any case under Sections 406/498A IPC. The criminal proceedings have been initiated to harass the petitioner and his family members. In the complaint dated 02.04.2011, there are no allegation of demand of dowry and entrustment of it to the petitioner. The omnibus allegations cannot be taken at their face value and even if they are taken and accepted in their entirety, do not constitute any offence or make out a case against the petitioner. The allegations levelled are absurd and inherently improbable and no conclusion can be arrived that there was sufficient ground for proceedings against the petitioner. The complainant never lodged any complaint with the police about the conduct and

behaviour of the petitioner, though she was having two mobile phones with her and also the facility to send E-mail. The complainant did not intend to live in a joint family and always insisted the petitioner to live separate from his parents to enjoy a free life without family restrictions. In the proceedings before CAW Cell, she categorically expressed her desire to live separate with the petitioner only to which he did not agree. It was further pointed out that the complainant voluntarily accompanied the petitioner on 29.10.2011 on a fun making trip out of Delhi to celebrate second marriage anniversary. She enjoyed the trip in hotels and tourist places and returned to Delhi on 01.11.2011. Apparently, the complaint dated 02.04.2011 was motivated and the allegations levelled therein were false. Reliance was placed on authorities, '*State of Haryana vs. Bhajanlal*', 1992 Supp.(1) SCC 335; '*Ashok Chaturvedi & ors. Vs. Shitul H Chanchani & anr.*', JT 1998 (5) SC 452; '*R.Kalyani vs. Janak C. Mehta & ors.*', (2009) 1 SCC 516; '*Raj Kumar Khanna vs. State (NCT of Delhi) & ors.*', 95 (2002) DLT 147 (DB); '*Geeta Mehrotra & anr. Vs. State of Uttar Pradesh & anr.*', (2012) 10 SCC 741; '*Rishi Anand & anr. Vs. Govt. Of NCT of Delhi & ors.*', (2002) 4 SCC 72; '*Bhushan Kumar Meen vs. State of Punjab and ors.*', 2011 (8) SCC 438; '*Sobha Rani vs. Madhukar Reddi*', AIR 1988 SC 121; '*Smt. Sarla Prabhakar Waghmare*

vs. State of Maharashtra & Ors.’, 1990 CrL.J. 407; ‘*Chandralekha and ors. Vs. State of Rajasthan and anr.*’, MANU/SC/1107/2012; ‘*Sanjeev Kumar Aggarwal & ors. Vs. State & anr.*’, 2007 (4) JCC 3074; ‘*Neelu Chopra & anr. Vs. Bharti*’, (2009) 10 SCC 184; ‘*Maksud Saiyed vs. State of Gujarat & ors.*’, (2008) SCC 668; ‘*S.K.Alagh vs. State of Uttar Pradesh & ors.*’, (2008) 5 SCC 662; ‘*Sanjeev Kumar Aggarwal & ors. Vs. State & anr.*’, 2007 (4) JCC 3074 & ‘*Anu Gill vs. State & anr.*’, 92 (2001) DLT 179.

3. Learned counsel for the respondent No.2 urged that there are specific and definite allegations against the petitioner and his parents for subjecting the complainant with cruelty and harassment for and on account of dowry demands. The petition under Section 482 Cr.P.C. is not maintainable as charge-sheet has already been filed in the Court and the Trial Court is to make up mind to frame charges. The dowry articles were entrusted to the petitioner and his family members. Major chunk of the articles is still in their custody. He further urged that during reconciliation proceedings, the petitioner had agreed to take the complainant for a trip outside Delhi. However, it was a pre-planned and well executed conspiracy to create evidence. There was no change in the conduct and behaviour of the petitioner after return from the trip. The photographs

placed on record exhibit a pre-planned venture to have specific poses for use at later stage. The contents of the complaint dated 02.04.2011 are correct. The authorities cited and relied upon by the petitioner are not applicable to the facts and circumstances of this case.

4. Undisputedly, the petitioner was married to respondent No.2 on 29.10.2009 and they lived at the matrimonial home till 01.04.2011. On 02.04.2011, the complainant lodged a complaint with CAW Cell against the petitioner and his parents. She alleged that after marriage, her in-laws especially her mother-in-law and father-in-law started harassing and taunting her and her family members for dowry and cash. The petitioner also joined them. The harassment gradually escalated to the level of physical assaults on many occasions. She was not permitted to visit her parents and was physically confined at the matrimonial home. At the time of tikka ceremony, her father had given ₹ 2.51 lacs cash and ornaments. At the time of marriage, demand was made for Honda City and her father paid a cash of ₹ 7 lacs to them as per their demand. She sent E-mail dated 21.11.2010 to her father and sisters informing sorry state of affairs. On 28.11.2010, her sister Ruchika Gupta was maltreated when she visited the matrimonial home. The mental and physical torture by her father-in-law, mother-in-law and husband continued and she suffered miscarriage on

21.09.2010 at Ganga Ram Hospital. After physical assault on 19.03.2011, she wrote a mail to her father. Again, she was scolded by her husband and after his departure, she informed her parents that it was unbearable and impossible to live in such a bad atmosphere. She was pushed badly and was given beating thereafter. She ran away with her wearing clothes and went to PS Model Town Enclave, Pitam Pura and lodged DD No. 58B at 07.30 P.M. Contents of the complaint, prima facie, disclose commission of cognizable offence and attract the provisions of 498A/406 IPC if read as a whole. Status report filed by respondent No.1 reveals that the matter was referred to Mediation Centre several times but no settlement or compromise could arrive at. It further discloses that statements of complainant's parents, Pushpa Devi and Amarnath Gupta and her cousin Ashish were recorded and they supported the complaint's version under Section 161 Cr.P.C. Status report further reveals that the gold articles of the complainant could not be recovered. CAW Cell's report recommending FIR records that the petitioner did not attend the counselling. The complainant had sent a fax to her father from the matrimonial home that her in-laws had scolded her due to which she suffered injury and the prescription from the hospital was placed on the file.

5. In the '*State of Haryana vs. Bhajan Lal*' (supra), the Supreme Court held that the powers of quashing of criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. Similarly in '*R.Kalyani vs. Janak C.Mehta & ors.*' (supra), the Supreme Court held that High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

6. In the instant case, 'prima facie' there are specific allegations against the petitioner for harassment on account of dowry demands. The complainant did not implicate her brothers-in-law. She had accompanied the petitioner for a trip during reconciliation proceedings before CAW Cell in an attempt to resolve the differences. The allegations in the complaint were investigated and statements of various witnesses were recorded under Section 161 Cr.P.C. After completion of investigation, a charge-sheet was filed in the Court. It is informed that the Trial Court has taken cognizance of the offence and the case is now listed for consideration on charge. The allegations in the complaint cannot be brushed aside at this stage in the proceedings under Section 482 Cr.P.C. which have been preferred after the charge-sheet was submitted in the Court after a considerable unexplained delay of two years from the registration of the FIR in 2011.

7. The petition is un-merited and is dismissed. Pending application also stands disposed of. It is however made clear that the observations in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

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