

\$~

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

DECIDED ON : 22 July, 2013

+ **CRL.A. 790/2011 & CrI.M.B.No.1119/2011 and**
CrI.M.A.No.19753/2012

GANGA SHARAN DHAWAN

..... Appellant

Through : Mr.Sikander Arora, Advocate, with
appellant present in person.

versus

STATE OF DELHI

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.
Mr.S.L.Luthra, Advocate for the
Complainant.
Complainant present in person.

CORAM:
MR. JUSTICE S.P.GARG

S.P.GARG, J. (OPEN COURT)

1. Ganga Sharan Dhawan (the appellant) challenges a judgment dated 19.05.2011 of learned Additional Sessions Judge in Sessions Case No.238/1/10 arising out of FIR No. 183/2008 registered at police station Rajouri Garden by which he was convicted under Section 498A IPC. By an order dated 23.05.2011, he was sentenced to undergo RI for two years

with fine ₹50,000/-. Out of total fine, ₹45,000/- were to be paid as compensation to the victim.

2. The appellant was married to Sunita Dhawan on 23.05.1987. A female child was born to the complainant in 1993 out of this wedlock. Allegations against the appellant were that on 30.03.2008 he gave beatings to the complainant at 10.00 A.M. and put some tablet in her mouth as a result of which her condition became critical. She was taken to hospital at 05.30 P.M. Daily Diary (DD) No.45A was recorded at police station Rajouri Garden at 11.59 P.M. on 30.03.2008. It was assigned to ASI Hari Parkash who with Ct.Omparkash reached at Arjun hospital and collected complainant's MLC. The Investigating Officer recorded her statement (Ex.PW-3/A) and lodged First Information Report. She levelled allegations of cruelty on account of dowry demands. The Investigating Officer recorded statements of witnesses conversant with the facts during investigation. The accused was arrested. On completion of investigation, a charge-sheet was submitted in the court against the appellant for committing offences punishable under Section 498A/328 IPC. He was duly charged and brought to trial. The prosecution examined 8 witnesses to establish his guilt. In his 313 statement, the appellant denied the allegations and pleaded false implication. He examined five witnesses in

defence. On appreciating the evidence and after considering rival submissions of the parties, the Trial Court by the impugned judgment convicted him under Section 498A IPC. He was, however, acquitted of the charges under Section 328 IPC. It is relevant to note that the State did not prefer any appeal against acquittal under Section 328 IPC.

3. During the course of arguments in appeal, on instructions, appellant's counsel stated at Bar that the appellant has opted not to challenge the findings of the Trial Court on conviction under Section 498A IPC. He, however, prayed to take lenient view as the matter has been settled with the complainant and she has no grievance against him.

4. Since the appellant has opted not to challenge the conviction under Section 498A IPC and accepts it voluntarily, the findings of the Trial Court under Section 498-A on conviction are affirmed.

5. Complainant is present with her counsel. She has no objection to modify the substantive sentence and to release the appellant for the period already undergone by him in this case. I have made inquiries from her if she has settled the dispute with her free consent. She has stated that the marriage has already been dissolved by a decree of divorce by mutual consent in July, 2012.

6. Vide order dated 15.07.2011 this Court had advised the parties either to reconcile or part company. On 18.11.2011, the appellant's counsel reported that a settlement was arrived at between the parties and that they could move the competent court for divorce with mutual consent. On 03.12.2012 they reported settlement between them. The appellant has placed on record certified copy of the proceedings whereby their marriage has been dissolved by mutual consent vide judgment dated 16.07.2012. Annexure-2 reveals that the matter was settled before the Counselling Cell, Family Court, Saket District Courts, New Delhi. After mutual discussion there, both the parties amicably resolved their disputes as per the terms and conditions detailed in para 1 to 22. They had also agreed that the complainant shall cooperate to quash both the FIRs i.e.183/2008 under Section 498A/328 IPC and FIR No.179/2011 under Sections 448/506 IPC registered at police station Rajouri Garden. It is stated that the terms and conditions mentioned in the settlement have been complied with.

7. Since all the disputes have been resolved between the appellant and the complainant before Counselling Cell, Family Court, Saket District Court, and the terms and conditions have been implemented, no useful purpose will be served to award substantive

sentence to the appellant under Section 498A IPC. Divorce by mutual consent has already taken place vide decree dated 16.07.2012.

8. Taking into consideration all these facts and circumstances of the case and the subsequent developments while maintaining conviction under Section 498A IPC, order on sentence is modified and the appellant is ordered to undergo the sentence for the period already undergone by him in this case i.e. four days. The appellant shall deposit ₹50,000/- in compliance of the order dated 23.05.2011 within fifteen days in the Trial Court and out of this total fine, the complainant shall be entitled to receive ₹45,000/- as compensation.

9. The appeal stands disposed of in the above terms. All pending applications also stand disposed of.

(S.P.GARG)
JUDGE

July 22, 2013
sa