

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

Reserved on: 23rd August, 2013
Pronounced on: 26th September, 2013

+ **CRL.M.C. 3581/2011**

TANU SHARMA

..... Petitioner

Through: Mr. Sudarshan Rajan, Advocate with
Mr. Rana Parveen Siddiqui, Advocate &
Mohd. Qamar, Advocate along with
Petitioner in person.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Ms. Rajdipa Behura, APP for the State/
R-1 with Ms. Nidhi Sharma, Adv.
Mr. Sunil K. Mittal, Adv. with
Mr. Kshitij Mittal, Adv.,
Mr. Saurabh Balwani, Adv.,
Mr. Anshul Mittal, Adv. &
Ms. Vaishali Mittal, Adv. for R-2 along
with Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Petition under Section 482 of the Code of Criminal Procedure, 1973(Code) is directed against an order dated 13.07.2011 passed by the learned Additional Sessions Judge (ASJ) whereby Criminal Revision Petition No.35/2010 filed by Akshod Kumar Sharma (Respondent No.2) was allowed to the extent that Respondent No.2 was discharged for the offence punishable under Section 506 Indian Penal Code, 1860 (IPC) and

Criminal Revision Petition No.3/2011 filed by the State for framing a charge for the offence punishable under Section 406 IPC was dismissed.

2. The case has a chequered history. Petitioner Tanu Sharma (the wife) entered into an inter-religion marriage, perhaps a love marriage with Respondent No.2 Akshod Kumar Sharma (the husband) on 11.08.1992.
3. The Petitioner made a written complaint dated 25.08.2006 to the DCP (North-West) alleging maltreatment and cruelty by her husband, Respondent No.2 since the inception of marriage. She stated in the complaint that at the time of marriage, the Respondent was employed with Overnight Express Courier Company, but after a few months, he joined another company and informed the Petitioner that he is undergoing studies for Chartered Accountancy (C.A.). He stopped going to office and carried on with his preparation for a period of two years, which was financed by the Petitioner. When eventually he could not clear his C.A., he took money from the Petitioner on the pretext of carrying out some business of shares and property dealing. Further, she states that she and the Respondent were maintaining a joint bank account and a joint locker since marriage. She alleges that in May 2004, the Respondent took away all her jewellery from the joint account without informing her and also withdrew all the money from the joint account and then went away. He came back again on 04.12.2004 and started asking for money. On the Petitioner's refusal to give the same, the Petitioner was badly beaten to the extent that she had to call the police. The Respondent also misbehaved with the Petitioner's aged father. When the police came, then the Respondent apologised. However, after 8-10 days, he again

extended beatings and demanded money from her and terrorised the children and threatened the Petitioner that she would be killed. The wife further gave details of the incident dated 24.08.2006 wherein the husband abused, hit and manhandled her very harshly and she had to run and escape to the house of her neighbours to save her life.

4. On completion of the investigation, a report under Section 173 of the Code was filed against the husband for offences punishable under Section 323/406/498-A/506 IPC. While ordering framing of the charge for the offences punishable under Section 498-A/506/323 IPC, the learned Metropolitan Magistrate discharged the husband of the offence punishable under Section 406 IPC on the ground that there were no specific allegations of entrustment of the property to the husband. Feeling aggrieved, the State approached the Sessions Court for framing of charge for the offence punishable under Section 406 IPC as well. The husband, on the other hand, came to the Sessions Court with a plea to discharge him for all the offences.
5. By the impugned order dated 13.07.2011, the learned ASJ maintained the order of discharge for the offence punishable under Section 406 IPC holding that the averments made in the complaint were completely bereft of any allegations of specific entrustment as also of demands of jewellery articles. The learned ASJ relying on the judgments of this Court in *Amitabh & Ors. v. NCT of Delhi*, 2000 CrL.L.J. 4772 and *Kanshi Ram v. State*, 2000 (2) AD (CrL.) DHC 528 further held that mere threat will not amount to an offence punishable under Section 506 IPC unless the threat was capable of causing alarm to the wife. Thus, the husband was

discharged for the offence punishable under Section 506 IPC also. The charges for the offences punishable under Sections 323 and 498-A IPC were however, maintained.

6. The wife being dissatisfied with the discharge of the husband for the offences punishable under Sections 406/506 IPC has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C.
7. It is urged by the learned counsel for the Petitioner that there were several instances of actual beatings caused by the husband to her as also to the children and thus, the learned ASJ erred in holding that there was absence of any intent to cause alarm to the wife while extending threats. He urges that in case of a husband and wife, when the jewellery is lying in a joint locker and the husband removes the same, he (the husband) will hold the jewellery only in trust of the wife. Thus, even in the absence of specific allegations of entrustment of the jewellery, its non-return will amount to criminal breach of trust.
8. I have before me FIR No.692/2006, registered in Police Station Prashant Vihar on 25.08.2006 on the basis of the complaint made by the wife. The wife encompassed several acts of the husband in this complaint. It is stated that the wife was being harassed since the inception of marriage. Then, the complaint talks about the incident of 04.12.2004 when the husband twisted the wife's arm on her refusal to give him money. Then, there is an incident after 8-10 days of 04.12.2004 which relates to extending the threat. Here again, it is alleged that the husband asked for money, called the wife a prostitute and threatened to kill her. Admittedly,

at this time, the husband was not armed with any article much less a weapon. The complaint is completely silent that the threat was given with an intent to cause any alarm to the wife or it actually had caused any alarm to her.

9. It is true that even if an accused is not armed, he may give a threat with the intention to cause alarm. Even if the allegations made in the complaint for the purpose of framing a charge are taken on their face value, it cannot be said that the threats given by the husband to the wife to kill her on not paying the money was with the intent to cause an alarm to the wife.
10. On 23.08.2006, the husband is again alleged to have hurled abuses on the wife and terrorised the children. The incident of 8-10 days after 04.12.2004 on its face value simply shows that the wife was called a prostitute and the husband asked for money and threatened to kill her. This, in view of the judgment in *Amitabh* and *Kanshi Ram* relied upon by the Court below, these acts will not amount to criminal intimidation.
11. As far as the offence punishable under Section 406 IPC is concerned, the details of the jewellery alleged to have been taken away from the joint locker has not been given. The allegations of removal of jewellery by the husband have been levelled on the basis of a letter dated 17.03.2007 written by Canara Bank to the effect that the joint locker was operated by the husband on 27.04.2004, 08.05.2004 and 29.03.2005. No report was lodged by the Petitioner immediately after coming to know of the operation of the locker by the husband. Even if it is assumed that the

husband retained the jewellery after the same was taken out by him from the joint locker and the same was being held by him in trust for his wife, admittedly there was no demand or direction by the wife(the Petitioner) as to how the jewellery is to be dealt with. In the absence thereof, it cannot be said that the jewellery was misappropriated by the husband amounting to an offence punishable under Section 406 IPC.

12. Thus, there is no illegality or material irregularity in the impugned judgment calling for interference in exercise of the extraordinary jurisdiction under Section 482 Cr.P.C.
13. The petition, therefore, has to fail; the same is accordingly dismissed.

(G.P. MITTAL)
JUDGE

SEPTEMBER 26, 2013

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