

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

% *Judgment reserved on :13.08.2014.*

Judgment delivered on :19.08.2014

+ CRL.REV.P. 565/2012 & Crl. M.A. No.17767/2012
SONAL SHARMA & ANR. Petitioners
Through: Mr. Vivek Aggarwal, Adv.

Versus

STATE GOVT. OF NCT OF DELHI Respondent
Through: Mr. Pawan Sharma, Adv. for the
complainant.
Mr. Navin K. Jha, APP for the
State.

+ CRL.REV.P. 566/2012 & Crl. M.A. No.17772/2012
ARUN SHARMA Petitioner
Through: Mr. Vivek Aggarwal, Adv.

Versus

STATE GOVT. OF NCT OF DELHI
..... Respondent
Through: Mr. Navin K. Jha, APP for the
State.
Mr. Pawan Sharma, Adv. for the
complainant.

+ CRL.REV.P. 588/2012
POOJA SHARMA Petitioner
Through: Mr. Pawan Sharma, Adv.

Versus

STATE GOVT. OF NCT OF DELHI & ANR.
..... Respondents
Through: Mr. Navin K. Jha, APP for the
State.
Mr. Vivek Aggarwal, Adv. for R-
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CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The order impugned in these petitions is the commons order dated 03.08.2012. The revisionist Sonal Sharma and Manisha Sharma are aggrieved by that part of the order vide which charge under Section 498-A of the IPC has been framed against them. They are the sisters-in-law of the victim Pooja. Arun Sharma is the mother-in-law of the victim. She is aggrieved by that part of the order wherein charge under Sections 498-A/313 of the IPC has been directed to be framed against her. Pooja Sharma is the complainant. She was the victim who had made the complaint. She is aggrieved by that part of the order wherein a separate charge under Section 406 of the IPC has not been framed against her husband, her father-in-law, her mother-in-law as also her sisters-in-law; she is also aggrieved by the fact that a separate charge under Section 325 of the IPC should have been framed against her husband but no such finding has been returned by the trial Judge. The third grievance of the complainant is that Section 34 of the IPC has not been added in conjunction along with the offence under Sections 498-A/313 of the

IPC.

2 Record shows that Ankur and Pooja had been married according to Hindu rites on 22.01.2006. They lived together till September, 2007. The family of Ankur comprised of his mother Arun Sharma, his father S.K. Sharma, his two married sister Sonal Sharma and Manisha Sharma of whom Sonal Sharma at the time of his marriage was a resident of Ambala and Manisha Sharma was a resident of Ghaziabad.

3 The complaint of the victim running into almost 13 pages has been perused.

4 The foremost submission of the learned counsel for petitioner Sonal Sharma is that the only allegation in the FIR against Sonal Sharma is that the victim had stated that her sister-in-law Sonal Sharma had told her that since she has not brought enough cash and jewelry, she should not be allowed to go for honeymoon. Submission of the learned counsel for the petitioner being that the petitioner is admittedly a resident of Ambala where she is doing teaching job. She had returned back to Ambala on the following day i.e. one day after the marriage and had met Pooja only once in the intervening period when she had come to visit her parents in the summer vacation in the month of May, 2006.

Submission being that even in the complaint of Pooja, there is no mention that Sonal had ever come to Delhi before 2006 and the sole allegation leveled against her (as noted supra) that she had told Pooja that she has not brought enough dowry and she should not be allowed to go for honeymoon would not make out a case of 'cruelty' as has been defined in Section 498-A of the IPC.

5 Needless to state that these submissions have been countered.

6 Record shows that in the entire FIR, the only role attributed to Sonal is that what has been noted supra. Admittedly Sonal was married at the time when Pooja and Ankur got married. Sonal had been married in 1997 and was living in Ambala and working as a teacher. She had come to Delhi only on one occasion in May, 2006 prior to the separation of Pooja from her husband which was in September, 2007. No other role has been attributed to Sonal. The charge framed against Sonal Sharma under Section 498-A of the IPC thus cannot be sustained. It is accordingly set aside.

7 Qua the role of Manisha Sharma, her role is different. The written submissions filed by the petitioner on this count and the counter submissions have been appreciated. This Court notes that there are

Crl. Rev. P Nos. 565/2012, 566/2012 & 588/2012 Page 4 of 9

specific allegations made by Pooja against Manisha Sharma which are of several dates. As per the FIR, Manisha Sharma along with her mother had told her that she had brought only 1 kg of gold and in case she does not bring more, they will get their son remarried. Other allegations related to insufficient gifts having been given to the husband of Manisha Sharma at the time of marriage and so also when Pooja returned back from the Holi festival, she was taunted by Manisha for bringing insufficient items. Manisha even otherwise used to criticize her.

8 Manisha Sharma was also a married sister-in-law and was living in Ghaziabad up to December, 2006. In December, even as per her own showing, she had gone to Hong Kong. Thus, even presuming that she was in Ghaziabad only up to December, 2006 yet this was the period of time when Pooja was facing a conflict in her matrimonial home and Ghaziabad being within the vicinity of Delhi. Manisha's comings and goings to her parental home are prima-facie borne out. Moreover, the allegations against Manisha Sharma are specific. She has been charged under Section 498-A of the IPC. This part of the order qua Manisha Sharma suffers from no infirmity.

9 The role attributed to Arun Sharma, the mother-in-law of the

victim has also been perused. As per the complainant, there were several occasions on which she was taunted by her mother-in-law for bringing insufficient dowry. Pooja had become pregnant twice. In March, 2006, she was in the family way; allegation was that her mother-in-law did not want her to deliver a child and accordingly she used to force her to stand on the kitchen slab and pick up heavy suitcases. The intent as is implicit from the complaint was that the pregnancy of Pooja should not culminate. This finds mention in the complaint. The medical record of Pooja also substantiate that on 17.03.2006, after the occasion of Holi, her ultrasound revealed a pregnancy of 4.3 weeks but since the cardiac activity of the fetus was not evident, a review was ordered. The complainant averred that the pregnancy of the victim was terminated because she was forced to take a pill given by her husband; it was reiterated that her mother-in-law also used to ask her to lift heavy suitcases and climb on the kitchen slab knowing fully well that she was pregnant at that time; this had led to the termination of her pregnancy. This complaint read in conjunction with the medical record makes out a prima-facie case under Section 313 of the IPC against Arun Sharma, the mother-in-law of the victim. The charge against her under Section 498-Crl. Rev. P Nos. 565/2012, 566/2012 & 588/2012

A also cannot be faulted with.

10 This Court notes that although charge under Section 313 of the IPC has been framed not only against Arun Sharma the mother-in-law of the victim but also against her husband but there no common intention has been noted in the order of framing of charge under Section 34 of the IPC. This appears to be an inadvertent mistake. Accordingly, Ankur Sharma and Arun Sharma are charged for the offence under Section 313 read with Section 34 of the IPC as it was with their common intent that this offence under Section 313 of the IPC be prima-facie committed. This part of the charge be modified by the trial Judge.

11 The submission of the learned counsel for the complainant that a separate charge under Section 406 of the IPC is also made out against in-laws of the petitioner i.e. both mother-in-law and father-in-law for which submission the learned counsel for the complainant has drawn attention of this Court to the last of the complaint wherein it has been mentioned that the istridhan articles of the victim were lying with her in-laws. This argument is bereft of force. As noted supra, the complaint is running into 13 pages. There is not a whisper or entrustment of any dowry article or any article with the in-laws of the victim. A mere one

line at the end of the complaint that the istridhan articles are lying with the in-laws would not by itself be sufficient to frame charge for the offence under Section 406 of the IPC which necessarily mandates that there must be a criminal intent on the part of the accused to retain an entrusted property. Non-framing of charge under Section 406 of the IPC suffers from no infirmity.

12 So also non-framing of charge under Section 325 of the IPC against the husband Ankur suffers from no infirmity. Submission of the learned counsel for the complaint on this count is that the victim had suffered an injury on her right wrist and this is substantiated by the medical record which is to the effect that the medical record of Shri Varshney Dharmarth Chikitsalya had certified that Pooja had suffered a right wrist fracture. This certificate had been given by Dr. Ashok Mutneja. Admittedly this document is dated 20.04.2007 and as per the averment made in the complaint, the victim had suffered injury at the hands of her husband on 05.03.2007. There is a gap of one month and 15 days. This intervening period which is wholly unexplainable. Even if an injury had been suffered by the victim on 05.03.2007 which resulted into a fracture, it would be unimaginable that she remained in pain and

Crl. Rev. P Nos. 565/2012, 566/2012 & 588/2012 Page 8 of 9

did not go to the doctor for such a long period. Impugned order on this count also suffers from no infirmity.

13 With these directions, revisions petitions are disposed off.

INDERMEET KAUR, J

AUGUST 19, 2014

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