

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

Reserved on: 10.07.2015

Date of decision: 16.07.2015

+ **CRL.REV.P. 316/2011**

|                  |                                              |
|------------------|----------------------------------------------|
| B C UPRETI & ANR | ..... Petitioner                             |
| Through          | Mr. Amit Khanna & Mr.Sanal Tokas, Advs.      |
| versus           |                                              |
| STATE & ANR      | ..... Respondents                            |
| Through          | Mr. R.K. Kohli & Ms. Mamta Pal, Adv. For R2. |
|                  | ASI Tej Ram PS Najafgarh                     |

+ **CRL.REV.P. 322/2011**

|             |                                               |
|-------------|-----------------------------------------------|
| JAYA UPRETI | ..... Petitioner                              |
| Through     | Mr. Amit Khanna & Mr.Sonal Tokas, Advs.       |
| versus      |                                               |
| STATE & ANR | ..... Respondents                             |
| Through     | Mr. R.K. Kohli & Ms. Mamta Pal, Advs. for R2. |
|             | ASI Tej Ram PS Najafgarh.                     |

**CORAM:**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J.**

1. Both the petitions have been heard together and are being disposed of by common order. The petitioners in Crl. Rev. P. 316/2011 are the father-in-law and married sister-in-law of respondent no.2 whereas, the petitioner in Crl. Rev. P. No. 322/2011 is the mother-in-law of respondent no.2.

2. The above named petitioners have put up a challenge to the order dated 23.03.2011 passed by the ASJ, Dwarka Courts, Delhi in CrI. Rev. No. 148/2010 whereby the order dated 04.05.2010 passed by the Learned Metropolitan Magistrate, Dwarka Courts, Delhi has been set aside and case has been remitted back to the court of the learned MM with a direction to frame charges against the petitioners in both the petitions under section 498A IPC.
3. The petitioner in CrI. Rev.P. 322/2011 (Jaya Upreti) has also challenged the order of the Revisional court whereby no interference was made with respect to framing of charges against her under section 406 IPC.
4. The respondent no.2 filed a complaint on 01.05.2003 in CAW cell, Nanakpura against accused persons namely the petitioners and another, alleging that she was treated with cruelty because of non-fulfillment of dowry demand. Pursuant to such a complaint FIR no. 437/2013 (PS Najafgarh) was registered on 17.08.2003 under sections 498A/406 IPC.
5. After investigation, chargesheet was submitted against the Petitioner on 02.02.2004 whereupon cognizance was taken.
6. It was only in the year 2010, that the matter was taken up for framing of charges. The learned MM on going through the allegations in the FIR and the investigation papers found the allegations against the petitioners, in both the petitions, to be vague and general and discharged them for the offence under section 498A IPC.
7. Charge was framed under section 406 IPC against Jaya Upreti (Mother in law) (petitioner in CrI. Rev. P. 322/2011).

8. Only the husband of respondent no. 2, namely Vijay Upreti, was charged with offence under section 498A IPC.

9. The learned MM, in the absence of material particulars, namely as to who demanded dowry and at what time, held such allegations to be suspect. The learned MM took note of the allegation that when the respondent no.2 (complainant) gave birth to a dead child, no one from the matrimonial home came to see her or provided any monetary support/help. The allegation that the respondent was suggested by Rachna Joshi, petitioner no.2 in Crl. Rev. P. 316/2011, to get her pregnancy terminated, was not viewed as an instance of cruelty. The learned MM was of the view that as per the own showing of the respondent/complainant, she never acted upon such advice.

10. Aggrieved by the aforesaid order of the learned MM, the respondent herein preferred a revision before the sessions court vide Crl. Rev. P. No. 148/2010.

11. The Revisional court, after noticing the law with regard to framing of charges did not agree with the findings of the learned MM that absence of date and time of the demand of dowry, made the allegation groundless. On the contrary, the Revisional court held that insinuations about bad looks, suggestions for abortion and unabated demand of money are definite indices of cruelty and harassment.

12. Finding such allegations to be existent in the FIR and the investigation papers, the Revisional court set aside the order of the learned MM, by his order dated 23.03.2011 and remitted the case back to the court of the learned MM for framing the charges under 498A IPC against the petitioners.

13. While seeking revision of the order of the learned MM, the respondent no.2 did not object to the framing of charges under 406 IPC against Jaya Upreti, mother in law, (petitioner in Crl. Rev. P. 322/2011) only and not against other accused persons.

14. Perused the orders.

15. Section 498A IPC provides for punishment to husband of relative of husband of a woman if she is subjected to cruelty. In the explanation appended to the section, the term cruelty has been defined and clarified. The explanation reads as under:-

*“Explanation*

*For the purpose of this section, “cruelty” means—*

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”*

16. From the reading of the explanation it becomes clear that what is important for attracting the ingredients of the offence of cruelty is harassment of a woman which is either likely to drive her to commit suicide or hurt herself or with a view to coerce her to meet any unlawful demand.

17. The unsavory comment on the looks of a woman; neglecting her in times of distress; asking her to bring money from her relatives and suggesting, for no genuine or medical reasons, abortion while she is in

family way are, without any doubt, harassment of the woman. Mere absence of date and time in the complaint, when such cruel acts were committed would not render the complaint of a woman irrelevant.

18. Now to the issue of framing of charge.

19. Section 239 Cr.P.C reads as hereunder:

***“239. When accused shall be discharged.***

*If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”*

20. While framing charge a magistrate is expected to apply his mind to the facts of the case, keeping in view the essential ingredients of the offence for which the accused is sought to be charged. The obligation to discharge the accused under section 239 arises when the magistrate considers the charge against the accused to be groundless. The real test for determining whether the charge is groundless is to find out that the materials available on record, even if un-rebutted, would not make out any case whatsoever. The word “groundless” means without any basis or foundation. Where there is even a suspicion about commission of offence, the charge cannot be stated as groundless.

21. It is well settled that at the stage of framing of the charges, no roving enquiry is to be made nor the pros and cons of the materials could be weighed in detail as it would tantamount to a mini trial and such is not in the scheme of the code. The reason for this is that the

prosecution ought to be allowed to bring its evidence at the trial and the case ought not to be shut out at the threshold when there is reasonable material for holding trial.

22. The absence of details regarding the date time and manner of occurrence do not make out a case for discharge.

23. So far as charges under section 406 IPC is concerned qua Jaya Upreti (petitioner in Crl. Rev. P. No. 322/2011), be it noted, that there is a clear averment in the complaint that the entire dowry money and the stridhan of respondent no.2 is in the possession of Jaya Upreti, the mother in law.

24. The Revisional court though had applied correct principles of law in setting aside the order of the magistrate, but has quoted the provisions of section 227 Cr.P.C which essentially deals with framing of charges in a session triable case. Nonetheless, the principles governing framing of charges, namely, prima facie case being made out and charges not being groundless, have been correctly applied by the Revisional court.

25. The order of the Revisional court does not suffer from any illegality or impropriety and therefore, the same is upheld and affirmed.

26. However, painful it is to note that charges were framed initially in the year 2010 whereas the case was lodged by the respondent no.2 in the year 2003. The order which is sought to be revised is of the year 2011. It is only expected that the trial be concluded as expeditiously as possible which would be in the interest of the petitioners and the respondent as well.

27. Both the petitions are dismissed accordingly, but with no order as to costs.

**ASHUTOSH KUMAR, J**

**JULY 16, 2015**

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