

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

% Order delivered on: 17th November, 2015

+ **Crl.M.C. 890/2015 & Crl.M.A. 3368/2015**

KRISHAN LAL & ANR Petitioners
Through Mr. Ravinder Narayan, Adv. With
Mr.Mohd. Zafar, Adv.

Versus

STATE OF NCT OF DELHI & ANR Respondents
Through Mr.Ravi Nayak, APP for the State
alongwith SI Sahdev Singh, PS
Amar Colony.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. Two petitioners namely Krishan Lal and Rajat Arora have filed the present petitioner under Section 482 Cr.P.C. for quashing of the summoning orders dated 2nd April, 2012 under Sections 323/341/34 IPC, P.S Krishna Nagar, passed by the Court of M.M. Karkardooma, Courts, Delhi and also against the order of dismissal of revision petition by the Court of ASJ, Karkardooma Courts, Delhi vide orders dated 30th August, 2014 and the consequent proceedings arising out of the same pending in the Court of M.M. Karkardooma Courts, Delhi.
2. I have heard the learned counsel for the petitioners and Additional Public Prosecutor for the State. Complainant was also heard on 28th May, 2015.

3. Marriage between the petitioner No.2 and respondent No.2 was solemnized at Delhi on 30th November, 2007. The petitioner No.1 is the father of petitioner No.2. On 1st September, 2010 an incident took place. According to the respondent No.1, respondent No.2 made complaint with different police authorities on 7th September, 2010. Subsequently, she also filed the complaint in the Court of ACMM, Karkardooma Court, Delhi, being Complaint Case No.160K/2010 under Section 200 Cr.P.C. for registration of the case against the petitioners under Sections 323/342/34 IPC. Before passing of the summoning order, on the basis of the verbatim complaint dated 7th September, 2010 before the Police Station Amar Colony about the same incident which took place on 1st September, 2010 and other incidents the FIR No.130/2011 was registered under Sections 498A/34 IPC on 7th April, 2011.

4. It is pertinent to mention here that in case the FIR is read, it is clear that the allegations made in the complaint by the respondent No.2 on the basis of which the FIR was registered are verbatim/ same in the complaint which was already pending before ACMM about the incident of 1st September, 2010. As a matter of fact, when the FIR was registered, the complaint made by the respondent No.2 against the petitioners was also having contents of offences under Sections 323/342 IPC. However, the same was registered for the offences under Sections 498A/34 IPC. After registration of the FIR which was already subjudiced, the summoning order was passed against the petitioners by Metropolitan Magistrate on 2nd April, 2012 for the offences under Sections 323/342/34 IPC in the complaint filed by the respondent No.2 for the incident which took place on 1st

September, 2010. On the basis of the FIR later on the charge-sheet was filed on 11th July, 2013 against the petitioner No.2 herein Sh.Rajat Arora (husband) putting him in Column No.11 and other accused persons i.e. Krishan Lal (father-in-law), Sushila Arora (mother-in-law), Deepak (Jeth) and Meenakshi Gupta (Nanad) in column No.12. Metropolitan Magistrate took cognizance against Rajat Arora (husband) only. The said order has not been challenged by the husband or any relation in higher court. On the basis of the charge-sheet, the charges were framed on 13th March, 2014 under Section 498A IPC against the petitioner No.2 only. At the time of framing of charges, the complainant did not press charges to be framed for the offences under Sections 323/342/34 IPC. Similarly, at the time of framing of charges, the earlier complaint filed by the respondent No.2 of the incident dated 1st September, 2010 was known to the parties as well as to the Court. Still the Court chose not to frame any charges under Sections 323/342 IPC. Even after the expiry of more than one and half years no application had been filed by the respondent No.1 for framing of charges for additional offences. The said order had also not been challenged by the respondent No.2. At the same time, the revision filed by the petitioners against the summoning order was dismissed on 30th August, 2014.

5. It has also come on record that before the Revisional Court, the petitioners raised the same arguments that when the FIR was registered on 7th April, 2011 all the allegations and contents of Sections 323/342/34 IPC were already available with the Police Station Amar Colony and despite of that only the cognizance under Sections 498A/34 IPC was taken. However, the petitioners before

the Revisional court were insisting for summoning of record which could not come and the plea raised by the petitioners was not considered despite of above said facts and circumstances.

6. Therefore the present petition is filed for quashing of summoning order dated 2nd April, 2012 and the order dated 30th August, 2014 passed by the Revisional Court.

7. It is a matter of fact that in case the complaint filed by the respondent No.2 on 7th September, 2010 on the basis of alleged incident which took place on 1st September, 2010 and the complaint filed before the Police Station Amar Colony on the basis of which FIR No.130/2011 was registered on 7th April, 2011 under Sections 498A /34 IPC are compared, they are verbatim same. Despite of the allegations available before the Police Station Amar Colony, the petitioners were not booked for the offences under Sections 323/342 IPC. Similarly, at the time of filing of charge-sheet only the charge under Section 498A IPC was framed against the petitioner No.2 on 13th March, 2014. The said order has not been challenged by the respondent No.2.

8. Counsel for the petitioners has relied upon the judgment in the case of **State of Gujarat v. Girish Radharishnan Varde**, 2014 (2) LRC 1 (SC). Para 14 of the said judgment reads as under:

“14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute

the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.

9. Under these circumstances, the prayer made in the present petition is allowed. The summoning order dated 2nd April, 2012 passed against the petitioners for the offences under Sections 323/342/34 IPC in the complaint case filed by the respondent No.2 for the incident dated 1st September, 2010 and the order dated 30th August, 2014 passed by the Revisional Court are quashed . No orders as to costs.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 17, 2015