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

Date of Decision: July 14, 2015

+ **CRL.M.C. 2753/2015 & Crl.M.As.9748-50/2015**

LATA & ORS.

..... Petitioners

Through: Mr. Haneef Mohd., Ms. Anu Vyas
& Mr. Kamal Pal, Advocates

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Navin Sharma, Additional
Public Prosecutor for respondent-
State with SI Gopchand PS
Bhajanpura

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Petitioners have been put on trial in FIR No.474/2006 for the offence under Sections 498-A/34 of IPC read with Sections 3/4 *the Dowry Prohibition Act* registered at P.S. Bhajanpura, Delhi by the trial court and the said order was unsuccessfully challenged by them by filing a criminal revision petition, which stands dismissed vide impugned order of 2nd March, 2015.

At the hearing, learned counsel for petitioners had submitted that the marriage in question was a nullity and therefore, prosecution of petitioners for the aforesaid offences is erroneous. To contend so, reliance

was placed upon decision of a co-ordinate Bench of this Court in *Mohit Gupta & Ors. v. State Govt of NCT of Delhi & Anr.* 2006 [3] JCC 1923. Learned counsel for petitioner contends that instant FIR is a counterblast to the petition for conjugal rights filed by petitioner-husband and so there is no justification for putting petitioner on trial in this FIR case. Reliance is also placed upon *Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & Anr.* 2008 [1] JCC 65 to submit that material produced by prosecution is not sufficient for putting petitioner on trial.

Learned Additional Public Prosecutor for respondent-State had supported the impugned order and had submitted that the marriage in question was not a nullity and a *prima facie* case is made out against petitioner and so, this petition deserves to be dismissed.

At the stage of trial, only *prima facie* case is to be seen. On this aspect, the pertinent observations of Apex Court in *Amit Kapoor v. Ramesh Chander and Another* (2012) 9 SCC 460 are as under: -

"At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."

Upon hearing and on perusal of the impugned order, trial court's order and the decision cited, I find that the marriage in question has not been declared a nullity under Section 5 of the *Hindu Marriage Act*. Therefore, reliance placed by learned counsel for petitioner upon decision in *Mohit Gupta (supra)* is misplaced. On the bare perusal of the FIR in

question, a *prima facie* case for the offence in question is made out.

Reliance placed upon *Onkar Nath Mishra* (supra) is also of no avail because in said case there was an earlier compromise and the allegations leveled thereafter on the face of it did not disclose the ingredients of the offence under Section 406/498A IPC. It is not so in the instant case.

Consequently, finding no palpable error in the impugned order, this petition and the applications are dismissed while not commenting upon merits of this case lest it may prejudice petitioners at trial.

(SUNIL GAUR)
JUDGE

JULY 14, 2015

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