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

Judgment delivered on: 29th September, 2015

+ CRL.M.C. 3384/2015

RICHA BHARTI ALIAS KAJAL Petitioner
Represented by: Mr. Sunil Kumar, Adv.

Versus

STATE NCT OF DELHI AND ANR Respondents
Represented by: Mr. Kamal Kr. Ghei, APP for
State with SI Yogesh Kumar, PS-Bhajanpura.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner has assailed the order dated 29.05.2015 passed by Id. Additional Sessions Judge-04 (Shahdara), Karkardooma Courts, Delhi whereby the Revision Petition filed by the petitioner was dismissed.

2. Further seeks directions thereby setting aside the order dated 20.09.2013 passed by Id. MM, Mahila Court-2, Karkardooma Courts, Delhi, thereby discharging respondent no.2 of the charges punishable under Sections 498A/406 IPC.

3. Pursuant to order dated 02.04.2009 passed by Id. MM on the complaint filed by the petitioner under Section 156 (3) Cr.P.C. case FIR no. 148/2009 was registered against the respondent no. 2. The allegations in the said complaint are as under:

- “(i) That she came into the contact of the accused when he used to come to the street to meet his friends and one day he expressed his love and told he wants to marry her. On 09.06.2008 the accused took the complainant to Haridwar there he had sexual intercourse with her and in the next morning they got married. Thereafter, the accused had regular physical relations with the complainant and after that he started avoiding her.*
- (ii) That when the complainant told the accused that she wants to come and live with him, the respondent denied the existence of marriage. On 06/07/2008, the complainant went to the house of the accused where accused beaten her and left her at her house in an unconscious state and in this regard she lodged a complaint to the police and under pressure accused married the complainant.*
- (iii) That After marriage, the accused demanded Rs.5 Lacs as dowry and also asked her to get her family house transferred in his name.*
- (iv) That after marriage complainant resided at the house of the accused for two days where the father and brother of the accused tried to do sexual acts with her and complainant somehow escaped from there. Thereafter, complainant and accused started residing separately in a rented accommodation. The father of the complainant gave the accused financial help of Rs.50,000/- but after some time accused started beating the complainant and demanded more money.*

- (v) *That after about 15 days, the father and brother of the accused came to the rented house where they badly beaten the complainant. Complainant got hurt and went to her parents house about which complainant made a written complaint to the police on 22.08.2008. Complainant also made others complaints to the police on 31.10.08 and 02.11.2008.*
- (vi) *That accused threatened the complainant to withdraw her complaints from police station.”*

4. The police investigated the case and filed the chargesheet before the Trial Court. Thereafter, the Id. Trial Court passed an order on charge on 20.09.2013 and opined as under:

“The present case is based on complaint made before the court on the basis of which present FIR was registered. Perusal of the said complaint and statement reveals that there is no specific allegation of harassment for dowry demand against the accused. The complainant has vaguely alleged that accused used to demand dowry without giving any specific details of the harassment committed due to non fulfilment of said demand. Further complainant has vaguely alleged that accused used to harass her by beating and demanding dowry from her but it has been nowhere stated in the complaint as and when they had beaten and demanded dowry from her. Hon’ble Justice Pradeep Nandrajog in 2007 (4) JCC 3074 has held that “explanation (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet harassment by itself is

not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that it is cruelty and this is made punishable under the section and complainant has failed to show the said nexus between demand and harassment.

Complainant has alleged only general and vague allegations against accused and no specific role has been depicted upon him. No specific date and time has been mentioned when he had harassed daughter of the complainant. Going by the material in hand no allegation of dowry demand and harassment thereto has been found against accused what to talk about specific.”

5. Being aggrieved, the petitioner filed a Revision Petition being No.8/14. Same was also dismissed vide order dated 29.05.2015 and hence, the present petition.

6. Ld. Counsel appearing on behalf of the petitioner submits that the petitioner made specific allegations against respondent no. 2 that on 06.07.2008, petitioner went to his house to stay there, but on 07.07.2008, respondent no. 2 along with his family members subjected her to cruelty and denied the marriage with her.

7. Ld. Counsel submits that the denial of marriage itself is a cruelty and there was no occasion before the trial court to come to the conclusion that there were no specific allegations against the respondent no.2. Moreover, it was specifically stated that respondent no. 2 used to beat the complainant almost every day and demanded more money. However, ld.

Trial Court at the time of arguments on charge has not considered these facts, rather discharged the respondent no. 2 from the offences mentioned above.

8. Ld. Counsel has drawn the attention of this Court to the facts that the said Id. Metropolitan Magistrate while directing the SHO concerned to register an FIR vide order dated 02.04.2009 opined that sufficient grounds for cognizable offence are there. Therefore, there was no occasion before the Id. Judge to opine that no specific allegations are made and the allegations are vague in nature.

9. The case of the petitioner/complainant is that her husband respondent no. 2 was working as a Medical Representative in Torrent Pharmaceuticals. She came to his contact when he used to go to her street to meet his friends. One day, he expressed his feeling towards her. Accordingly, she became the victim of sexual exploitation and has been subjected to cruelty by her husband, i.e., respondent no. 2 and her in-laws. The respondent no.2 cohabited with her and had frequent sexual intercourse under the belief that she is his lawfully wedded wife. He was continuously demanding dowry in cash and commit cruelty upon her.

10. On 09.06.2008, respondent no.2 had taken her to Haridwar and had sexual intercourse with her. But she told him that she will not make any relations since they are not married. On this respondent no. 2 assured her to marry in the morning and marriage was performed accordingly. Thereafter, they had regular physical relations.

11. It is further the case of the petitioner that thereafter the accused started avoiding her. Once, respondent no. 2 called her at his house under

the false pretext of meeting and had forcible physical relations with her.

12. On the basis of the chargesheet filed by the investigating agency, Id. Metropolitan Magistrate has recorded in its order dated 20.09.2013 that the present case is based on the complaint made before the Court, on the basis of which FIR mentioned above was registered. The complaint and the statement reveals that there were no specific allegations of harassment for dowry demand against respondent no.2. The complainant has vaguely alleged that respondent no. 2 used to demand dowry without giving any specific details of the harassment committed due to non-fulfilment of said demand. Further the complainant has vaguely alleged that respondent no. 2 used to harass her by beating and demanding dowry from her but it has nowhere been stated in the complaint as and when he had beaten and demanded dowry from her.

13. As per the provisions of Section 498A IPC, the husband and any of his relatives would be liable if the wife / daughter-in-law is subjected to cruelty as defined in the Section. To attract the offence under the aforesaid Section, it must be established that the cruelty or harassment was done with a view to force her to cause bodily injury to herself or to commit suicide or to compel her to fulfil the illegal demands of dowry.

14. The Id. Revisional Court has recorded that the petitioner has stated that after the marriage respondent no. 2 demanded Rs.5,00,000/- and transfer the property of the petitioner in his name, but there was no whisper that the complainant was subjected to cruelty on account of said demand.

15. As regards the offence under Section 406 IPC is concerned, there

are no allegations that the complainant had entrusted the some property to the respondent no. 2. Thus, there is no question of misappropriation of the same. Accordingly opined that no offence under Section 406 IPC is made out against the respondent no. 2.

16. This Court in ***Sanjay Kumar Aggarwal vs State and Another 2007 (4) JCC 3074*** held that mere demand of property by itself is not a cruelty. The relevant portion reads as under:-

“11. Explanation (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet harassment by itself is not cruelty. Mere demand for property etc by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that it is cruelty and this is made punishable under the section.”

17. Also while deliberating on the offence under Section 406 of the IPC, this Court in ***Anu Gill vs State 92(2001) DLT 179*** opined as under:-

“To constitute the offence under Section 406 IPC there must be clear and specific allegation that the accused was entrusted with some property or domain over it, by the complainant; that the accused has dishonestly misappropriated or converted the same to his own use or that accused refused to return back the articles when the same were demanded by the complainant.”

18. Keeping in view the above facts and legal position as recorded above, I am of the considered view that there is no perversity or illegality

in the order passed by the two Courts below.

19. Finding no merit in the instant petition, same is accordingly dismissed.

SURESH KAIT, J

SEPTEMBER 29, 2015

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