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

+ W.P.(CRL) 2035/2016

MOHIT MEHTA

..... Petitioner

Through Dr. Harish Uppal, Mr. Neeraj Chaudhari

And Ms. Saakshi Agrawal, Advocate

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Ms. Kamna Vohra, Additional Standing

Counsel for the State.

Respondent No.2, in person.

SI Raman Pratap, PS Nanakpura

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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18.07.2016

Crl. M A 10627/2016

Allowed, subject to just exceptions.

WP(Crl.) No. 2035/2016

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 0035/2016 under sections 498-

A/406/34 IPC registered at Police Station Crime Against Women Cell, Nanakpura on the complaint of respondent no.2

Heard and material placed on record perused. In this case, investigations are going on and are at preliminary stage. The allegations in the FIR are yet to be verified, inasmuch as the material has to be collected.

Learned counsel for the petitioner has contended that averments in the FIR are trivial in nature, inasmuch as, do not disclose ingredients of offence under Section 498A IPC.

A perusal of the FIR shows that the specific allegations have been levelled disclosing the ingredients of offences for which FIR has been registered.

“To, The DCP/Officer Incharge, The Women Crime Cell, Nanak Pura, New Delhi. Madam, My name is Nayanika Thakur Mehta, I am an associate professor at National Institute of Fashion Technology (NIFT, Ministry of Textiles). In utter state of distress I am lodging this complaint against my husband. 1. Mr. Mohit Mehtra (husband) 2. Mr. Ashok Mehta (father-in-law) 3. Mrs. Savita Mehta (mother-in-law) all residents of B-9/2, Vasant Vihar, New Delhi-110057. I had gone to Mumbai, with my daughter baby Manasvini (dt of birth 17.12.2008) 5-1/2 years old on an official training on behalf of NIFT after getting the due approval letter from the Institute. The details and itinerary travel were well known and informed to my husband and in-laws. I travelled to Mumbai on 14th June, 2014. On 16th June afternoon, I received an SMS from my neighbour asking me if we are shifting out from our appt. MA 1/1, 2D Garden Estate, Gurgaon. I was surprised by the SMS hence I called her up to find out why she wrote such SMS. She then told me that all the house

hold belongings were being packed and moved by my husband and his parents through movers and packers. Thereafter, I also received call from another neighbour Ms. Tanu sharing the same information. On getting to know the same I called my maid Ms. Nayan who confirmed the same fact. Still wanting to know why such an abnormal hurried packing was taking place I tried to get in touch with my husband but to my utter shock there was no response. Not able to understand I again tried to get in touch through phone. Thereafter I sent an SMS on 19.06.2014 to get in touch with me, but instead of calling me he sent an SMS to see email. I immediately took the flight back to Delhi from Mumbai on 19.06.2014, cutting short my formal internship. On 19.06.2014 on visiting the house I realized that the door locks were changed and all my belongings including clothes, jewellery, stridhan, car, documents etc. were all taken. The fact of vacation of the house is even confirmed in his mentioned email dated 19.06.2014, whereby the intention of my husband is clear where he wants to force me to agree for mutual divorce. Now, I am rendered homeless and both me and my child are at the mercy of my relatives. I am also being forced to handover my child and I suspect that they may use forceful and deceitful means to take away the child from me. On April 7, 2002 I was married through an arranged marriage with my husband Mr. Mohit Mehta, it was a rushed marriage. In Jan 2002 my parents in law had come to Nottingham, UK to approve me (where I was studying MA Fashion & Textiles through Scholarship). Within 3 days of reaching back in India on 17th Feb, 2002 we were engaged. The marriage was fixed for 7th April, 2002. Soon after the engagement we went back to Hoshiarpur (my home town) to make

arrangements. On 18th March due to sudden drop in health and the stress regards marriage (my mother had under gone kidney transplant 7 years ago) my mother expired. No one from the in laws family came for last rites. The marriage took place as per decided date on 7th April, 2002 at Haryana Tourism Hotel, Magpie in Faridabad. The marriage was much criticized as it was not in a 5 Star Hotel much below the expected standard of my in laws. After being married to my husband, within days I felt an abnormal behaviour of him and his family. He could share every personal husband and wife discussion with his mother. Very frequently the three would lock themselves up and leave me outside and discuss matters, including all financial matters, which I was always kept out off. There were frequent instances where the three got together and publicly, in front of relatives verbally abused me and my family. I was not given any money for self or for them household expenses. I was made expected to work and earn on my own, which was made clear to me by husband stating he will never sponsor my personal expenses or otherwise as I was well qualified to earn on my own. I came to know after one year (during one of the arguments) by my husband that his current father was his second father, a divorcee who married his mother who was a widow and had a son at the age of 17 from the first husband. He showed that he had a troubled childhood as he was suffering between his parents and mama, missing for upbringing. Mama was also a divorcee and massi is a spinster (not married). This family background did not want a child and frequently stated that "HE PREFERS TO HAVE DOGS THAN CHILDREN". Depsite me wanting to have a child and bearing the presence from my in laws to bear one, my husband refused

to go for a baby. After finally decided to have a baby in year 2006 I could not conceive and on medical examination of both of us it was found that he did not have normal sperm count that could result in natural pregnancy. So we decided to go for IUI and later for IVF. The painful process lasted for two and a half years. Even during this period and pregnancy thereafter he was abusive, unbothered about my health. I was even at times deprived of my meals when he was angry. My daughter was born on 17.12.2008 after induced labour. Their behaviour worsened after the child and my husband became physically abusive. In the past five years he is drinking on a daily basis and after that insults me and my father. He made it very clear that he does not like me interacting with my only sister, her family and other relatives. Despite all these problems I continued to pacify him, to make this marriage work for the sake of my child and family reputation. I even did not report the physical abuse to the police. In October, 2012 we finalized to purchase DDA Flat from the first allottee of the flat in Vasant Kunj. And the purchase agreement was signed on the day of Ashatmi. I signed as a joint owner and paid an advance draft of Rs.10,00,000/- in the name of the owner, Mr. Inderjeet Rai Sharma. To my surprise in the month of January, 2013 my husband brought sweets home to declare that the house was registered in his name only. I was shocked at this news as I was not even informed about the change. We had an argument on this issue, about which he approached my father and brother in law. On my husband's request my brother in law intervened, but in spite of my brother in law's intention to resolve the matter he became aggressive and abusive towards him. My husband told me to snap ties with my own father and sister and her family.

The matter though had got worse in family but I still decided to carry forward the marriage considering my daughter's future and her happiness (inspite of the DECEIT). At this stage my daughter had first celebrated her fourth birthday. In the last one year, unknowingly of any reason I found my husband's behaviour to be unpredictable and extremely abnormal. My parents in law in the month of September stopped me to enter their house in Vasant Vihar. So far, I was taking my daughter to school, my parents-in-law were picking her back taking her to their house till I would come back from NIFT, Hauz Khas to their house in Vasant Vihar, driving with my daughter to our house MA 1/1, 2D, Garden Estate. I would teach her in the evening and take her to the pool or to her friends around. However, with September, 2013 episode of my in laws stopping me to come to Vasant Vihar. I was asked to not pick her up in the evening and the same shall now be their responsibility. In January, 2014 my husband forced that Manasvini should take the school bus instead of me dropping her to (Vasant Vihar) School on my way to work at Hauz Khas NIFT. In short they were trying to take control of my child from me and their motive is now clear to me by their shameful act, which they have committed. Madam, I again bring back to your notice the fact that my husband and his parents have rendered me homeless, accusing me on e-mails and asking for mutual divorce. They are even threatening to take away my child. I request your kind officers to please take strict action against them and help to get back my articles of basic needs, stridhan, car and other items and provide protection to me and daughter so that my child can start going to school and I resume my normal life. Your kind help and guidance will be

most appreciated and would be blessing at this crucial juncture. Thanking you, Yours faithfully,
Sd/- Eng. NAYANIKA THAKUR MEHTA C/o NIFT D/o Mr. Soma Thakur, Opp. Gulmohar Park, Hauz Khas, New Delhi. Mobile : 9818854464, Sir, DO to register a case U/S 498A/406/34 IPC and investigation handed over to me please. Sd/- Eng. SI Radhey Shyam no.D-3766 PIS No.28780694 dated 14.03.2016 PS CWC N. Pura, Delhi. Police proceeding on the receipt of tahrir at this police station, case having been registered on computer and DO/IO sir draft has been checked and was found to be correct and hence the FIR was Freeze copy of FIR along with original tahrir have been got handed over SI sir, documents shall be sent by dak to the higher officials. HC/DO”

A holistic reading of the FIR would indicate that, prima facie, ingredients of offence under Section 498-A IPC are disclosed inasmuch specific instances of harassment by the petitioner have been given. The question whether the petitioner had, in fact, harassed and treated the respondent with cruelty and had retained jewellery and other articles of respondent is a matter of trial, inasmuch as, these facts have yet to be verified during the investigation. Reliance is placed on Taramani Parakh Vs. State of M.P. and Ors., MANU/SC/0285/2015.

It may be noted that power under Section 482 Cr.P.C. is to be exercised by the High Court sparingly and in exceptional cases in order to prevent patent miscarriage of justice. Where the offence is even broadly satisfied, the court would be inclined to permit continuation of prosecution rather than quashing it at the initial stage. High Court has not to marshal the

record with a view to decide admissibility and reliability of the material on record, at that stage.

Learned counsel for the petitioner has placed reliance on Sushil Kumar Sharma Vs. Union of India, (2005) 6 Supreme Court Cases 281, Raj Kumar Khanna Vs. State (NCT of Delhi), 95 (2002) DELHI LAW TIMES 147 (DB), Varsha Kapoor Vs. UOI & Ors., 170 (2010) DELHI LAW TIMES 166 (DB) and Sherish Hardenia & Ors. Vs. State of M.P. & Anr., MANU/SC/1297/2013. I find these judgments to be in the context of different facts.

Learned counsel for the petitioner has further contended that complaint under the Domestic Violence Act has also been filed by the respondent wherein an amount of ₹10,00,000/- has been returned, besides certain other articles. In my view, this fact by itself is not sufficient to quash the FIR on its merits.

The petition is dismissed.

A.K. PATHAK, J

JULY 18, 2016/P