

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

% Decided on: 23rd September, 2016

+ **CRL.M.C. 2039/2016**

MD. HASNAIN & ORS

..... Petitioner

Represented by: Mr. Ashok Kumar Sharma,
Adv.

versus

THE STATE & ANR

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with SI Dinesh Kumar PS
Jamia Nagar.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

1. Service report qua notice to respondent No.2 is awaited. However, as per the affidavit of service filed with the tracking report notice has been delivered to respondent No.2. None is present on behalf of the respondent No.2.

2. The allegations of the complainant in the FIR are:

“Sir, it is humbly submitted that I, Shama Shams, was living with my husband at F-217, Shaheen Bagh Abulfajal Enclave Part II. We both had court marriage at Delhi one year back on 09.05.2014 and we both lived here peacefully. Then suddenly my husband went for his job that day was 16.02.2015. Just then my mother-in-law, father-in-law and the cousin brother of my

husband whose name is Mumtaz all three came in Bolero to Delhi from Bihar and sent a boy to my husband's workplace for calling my husband with a message that, "your father's condition is very serious and he has come to Max Hospital, come along and get returned after seeing him". When my husband went, they just then made my husband sit in the vehicle and all these people went to Bihar leaving behind me all alone at Delhi. Then I alone went to my in-laws in Bihar, my in-laws did not allow me to enter into the house nor did allow me to talk and meet to my husband. I waited since 16.02.2015 thinking that my in-laws would accept me and my husband would come back to me. But nothing such happened. My in-laws are not allowing me to meet my husband. They left me alone in the tenanted house at Delhi. Now I am not able to pay the rent. That is why I am living with my mother as I have not source of income. Therefore it is requested Sir that legal action may be taken against in-laws."

3. A perusal of the FIR would reveal that the only allegation against the petitioners is that she was not permitted to enter into the matrimonial home. The said allegation simplicitor is not a harassment as defined under Section 498A IPC which provides as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. 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.”

4. To attract ingredients of Section 498A mental or physical harassment/trauma caused to the complainant should be of a nature which drives her to commit suicide or cause grave injury or danger to life, limb or health and is an aggravated form of harassment. A standalone act of not permitting the complainant to enter the matrimonial home is not an aggravated harassment of the kind which would drive her to commit suicide or cause danger to life, limb or health and would not attract the provision of Section 498A.
5. Allowing the petition FIR No.1328/2015 under Section 498A IPC registered at PS Jamia Nagar and the proceedings pursuant thereto are hereby quashed.
6. Petition is disposed of. Order dasti.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 23, 2016
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