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

Judgment delivered on: 28th January, 2016

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CRL.M.C. No.3301/2012

MANJEET KAUR

..... Petitioner

Represented by: Mr.Prag Chawla & Mr.Aman
Kalra, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr.G.M.Farooqui, APP for
the State with WSI
Darshana, PS Nangloi, Delhi
Mr.Sumit Gaba, Adv for
complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction thereby setting aside the order dated 17.08.2012 passed by learned Additional Sessions Judge-03, West District, Tis Hazari Courts, Delhi in Criminal Revision No.26/2012 and order dated 23.04.2012 passed by learned Mahila Court, West District, Delhi in case FIR No.112/2007 registered at police station Nangloi, Delhi for the offences punishable under Sections 498A/406 of the IPC.

2. Learned Trial Court vide order dated 23.04.2012 discharged all the accused persons for the offences punishable under Section 498A/406 of the IPC, however petitioner Manjeet Kuar was ordered to be charged for

the offence punishable under Section 498A of the IPC, while discharging her for the offence punishable under Section 406 of the IPC.

3. Being aggrieved, petitioner filed the Criminal Revision No.26/2012 and while maintaining the order dated 23.04.2012 passed by learned Trial Court, learned Revisional Court dismissed the above petition.

4. The charge against the petitioner is that on 23.10.2004 the complainant was beaten up and thrown out of matrimonial house by her husband Harjeet Singh (since deceased) and his sister – Manjeet Kaur (petitioner herein) in her wearing apparel and she was threatened not to return in case their demand of Rs.2.00 Lac was not fulfilled.

5. The present petition has been filed mainly on the ground that on the alleged date of incident i.e. 23.10.2004, the petitioner was not even present in India. Therefore, the allegations against her are false.

6. On perusal of the order dated 23.04.2012 it is noted that neither the petitioner urged this ground before learned Trial Court nor learned Trial Court has given opinion thereto. However, learned Revisional Court has dealt with this issue and recorded as under:-

“8. Whether or not the revisionist is a resident of Sweden or was not available on 23.10.2004 in India is a defence of the revisionist which cannot be considered at the stage of framing of charge. The complainant / injured has specifically averred that the revisionist is the responsible for the cruelty inflicted upon her for dowry.”

7. Since the present petition was filed on the ground that petitioner was not present in India on the date of alleged incident i.e. 23.10.2004, therefore, pursuant to the directions of this Court, SHO, police station

Nangloi, Delhi filed the status report on 06.08.2014 wherein it is reported as under:-

“In the continuation of previous status report it is further submitted that the arrival and departure record from India of petitioner Manjeet Kaur has been collected from the concerned authority i.e. Intelligence Bureau, R.K.Puram, Delhi. As per the record received from Intelligence Bureau the petitioner Manjeet Kaur having Passport No.A-1754809 and F-8309494 arrived in India on 15.06.2004 and went from India on 16.09.2004. After it the petitioner again came to India on 06.06.2005 and went again from here on 30.08.2005. Thus, as per the report received from IB the petitioner was not present in India on 23.10.2004.”

8. It is not in dispute that charge has to be framed on the basis of the material available with the charge sheet and the defence, if any available with the accused the benefit thereof can be taken during trial. It is also settled principal of law that if apparently no case is made out against accused, then the accused should not be directed to face trial for the offences for which he is not responsible. In the present case, police has filed the status report wherein it is clearly mentioned that she was not present in India on 23.10.2004.

9. The Supreme Court in ***State of Haryana & Ors v. Ch. Bhajan Lal & Ors : AIR 1992 SC 604***, spell out several contingencies where power under Section 482 of the Cr P C can be exercised to prevent the process of the Court or otherwise to secure the ends of justice. The allegation against petitioner appears to be false in view of report filed by the SHO. It is also not disputed that the order of discharge of other accused persons including discharge of petitioner herein for the offence punishable under Section 406 of the IPC has not been challenged till date.

10. Keeping in view the fact that petitioner was not even in India on the date of alleged offence, I hereby set aside the order dated 17.08.2012 passed by learned Additional Sessions Judge as also order dated 23.04.2012 passed by learned Trial Court whereby charge under Section 498A of the IPC is framed against her. Petitioner stands discharged from the above noted case. Her bail bond is cancelled and surety stands discharged.

11. Accordingly, the present petition is allowed with no order as to costs.

Crl. M.A. 16709/2012 (for Stay)

Dismissed as infructuous.

JANUARY 28, 2016

M/jg

**SURESH KAIT
(JUDGE)**