

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

+ **CRL.M.C. 4944/2015 & CrI.M.A. 17713/2015**

Date of Decision : March 03rd, 2016

OM PRAKASH

..... Petitioner

Through Mr.Pradeep Singh, Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through Mr.Satya Narayan, APP for State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for quashing/setting aside the order dated 09.05.2015 passed by the learned Additional Sessions Judge in revision petition upholding the order dated 07.03.2009 passed by the learned Metropolitan Magistrate for framing of charge under Section 498A/046 IPC and also for quashing of FIR No.376/2000, under Section 498A/406 IPC, Police Station Alipur.

2. The factual matrix emerges from the record are that the marriage of between the petitioner and complainant/respondent Hemlata was solemnized on 20.02.1999. The respondent no.1 got

lodged the FIR in question in which she alleged that since the inception of marriage the attitude of the petitioner and his family members was not cordial towards the respondent no.2. The marriage between them never consummated. The petitioner and his family members kept on taunting the respondent no.2 with regard to dowry. It was also alleged that the petitioner and his family members snatched all the jewellery and ornaments of the respondent no.2 which were never returned to her. The respondent no.2 was left at her father's house on 13.08.1999.

3. After the registration of FIR, the charge sheet was filed in the Court against the petitioner and other co-accused persons. The learned Metropolitan Magistrate vide order on charge dated 07.03.2009, found prima facie sufficient material against the petitioner Om Prakash for framing of charge for offence under Section 498A/406 IPC, whereas the other co-accused persons were discharged. Feeling aggrieved of the framing of charge, the petitioner preferred a revision petition which was dismissed by the learned Additional Sessions Judge vide order dated 09.05.2013 being barred by limitation. Feeling aggrieved of the passing of the orders by the Courts below, the instant petition has been filed by the petitioner.

4. I have heard the arguments advanced on behalf of the parties have been heard and have also gone through the material available on record.

5. Argument advanced by the learned counsel for the petitioner is that there is no single allegation against the petitioner which is such grievous that was likely to force the complainant to commit suicide or

cause injury to her. In the entire complaint, there is no demand of dowry by the petitioner at any time. The complainant made the allegations of only commenting which is not sufficient to term as demand of dowry as per the judgment of Hon'ble Apex Court in the case of State of *H.P. v. Nikku Ram AIR 1996 SC 67* and of this Court in *Smt. Neera Singh v. The State 2007 (138) DLT 152* in which it was observed that the taunting for not bringing sufficient dowry is distinct from demand of dowry and should not be confused with and not sufficient to constitute the offence under section 498A IPC.

6. Further argument advanced is that no case under Section 406 IPC is made out against the petitioner inasmuch as the complaint did not disclose that istridhan was ever entrusted to the petitioner or that the petitioner ever misappropriated it. Even in the the last paragraph of her complaint, the complainant herself submitted that she wanted to recover the expenditure made on wedding by her father which is not allowed to constitute an offence under Section 406 IPC. In support of this contention, judgment in the case of *Onkar Nath Mishra v. State of NCT of Delhi 2008 (1) LRC 49 (SC)* has been relied upon.

7. Perusal of the complaint made by the complainant to the police shows that there are specific allegations in the same against the petitioner to the effect that he taunted the complainant for bringing insufficient dowry. In the complaint, it is mentioned that after marriage, the complainant and the petitioner left for Jammu where he was posted as Corporal with Indian Air Force. From the first day of marriage, the complainant was treated badly by her husband and other

in-laws. The petitioner beat the complainant on the first night itself. In Jammu also, the petitioner kept on torturing the complainant. It is specifically alleged in the complaint that the petitioner-husband and in-laws generally used to comment that the dowry given by the father of the complainant was very less comparing to their expectations. She further alleged that she was given beatings number of times and specifically in the night of 12.08.1999. The complainant further alleged that she was left at her parental home by the petitioner after forcibly snatching all her jewellery and ornaments.

8. The contention of the petitioner that the taunting alone cannot make out a case for the demand of dowry is not acceptable for the reasons that the several instances have been given by the complainant where she was given beatings right after the inception of marriage and it was not the single occasion when she was taunted for bringing insufficient dowry. It has been stated by the complainant that she was generally asked about the bringing of insufficient dowry.

9. The cruelty as explained in Section 498-A of the IPC provides for any cruelty whether mental or physical. Explanation (a) to Section 498-A IPC provides that any wilful conduct which can be inferred by direct or indirect evidence. It is a settled law that to constitute cruelty under Section 498-A IPC, it is not essential that there should be specific demand of dowry by either the husband or his relatives rather mere taunting in regard to dowry is sufficient to constitute the offence of mental torture under Section 498-A IPC.

10. In similar circumstances, the Hon'ble Apex Court in the case of ***Pawan Kumar & Ors. v. State of Haryana AIR 1998 SC 958*** has observed that :

“...A girl dreams of great days ahead with hope and aspiration when entering into a marriage and if from the very next day the husband starts taunting for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself, in our considered opinion, would constitute to be a wilful act to be a cruelty both within the meaning of Section 498-A and Section 304-B IPC.”

Similar views have been expressed by the Hon'ble Apex Court in another judgment in the case of ***Amar Singh v. State of Rajasthan AIR 2010 SC 3391***.

11. Since in the present case there are specific allegations against the petitioner that the complainant used to be taunted for bringing insufficient dowry, in my considered opinion the acts of the petitioner are securely covered under the willful act of cruelty upon the complainant under Section 498-A IPC. Apart from the same, there are also allegations against the petitioner that the istridhan of the complainant was in the dominion of the petitioner when she was left at her parental home and at that time, the petitioner snatched all the jewellery and ornaments of the complainant.

12. Even otherwise, it is a settled law that where the materials placed before the Court disclose grave suspicion against the accused,

the Court will be fully justified in framing a charge. At the time of framing the charge, the Court has not to apply the same standard of test and judgment which it finally applies before recording a finding of guilt or otherwise. At this stage, what the Court has to see is whether there is ground enough for presuming that the accused have committed the offence for which they have been charged. The Court is not to judge the veracity and effect of evidence whether it will culminate in conviction.

The Hon'ble Apex Court in similar situation in case of *Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135* observed as under :

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act

merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See *Union of India v. Prafulla Kumar Samal and Anr.*].”

13. In view of the law laid down by the Hon’ble Apex Court and the discussion made above, this Court is of the considered opinion that the petitioner has failed to make out any case for setting aside or quashing the orders passed by the Courts below or to quash the FIR in question.

14. Consequently, the present petition is dismissed.

15. Application CrI.M.A. 17713/2015 is also disposed of.

MARCH 03, 2016
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(P.S.TEJI)
JUDGE