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

+ CRL.REV.P. 469/2012

SHIPRA RASTOGI Petitioner

Through: Mr.Harish Pandey, Adv.

versus

STATE & ORS Respondents

Through: Ms.Neelam Sharma, APP.
Mr.Satish Tamta, Sr.Adv. with
Ms.Ruchi Kapur, Adv. for R-2 to 5.
SI Narinder, ISC, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **19.07.2017**

The petitioner has challenged the order dated 03.04.2012 passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.09/2012 arising out of FIR No.240/2005 (P.S.Dwarka) instituted for the offences under Sections 498A/307/34 of the IPC whereby the learned Trial Court has discharged respondent Nos.5 & 6 of all the charges and has discharged respondent Nos.2, 3 & 4 of the charge under Section 406 IPC but has framed charges against respondent Nos.2, 3 & 4 under Section 498A read with Section 34 of the IPC and only respondent No.2 for the offence under Section 307 IPC.

The petitioner was married to respondent No.2 on 26.02.2002. It has been alleged by her that she was pestered and troubled for dowry and was

subjected to mental and physical cruelty. As the allegation stands, respondent No.2, after some time of the marriage started troubling the petitioner and on one occasion i.e. on 22.01.2005, an attempt was made by respondent No.2 to set the petitioner on fire while she was cooking food in the kitchen which led to 40% burn injuries on her person. The petitioner was allegedly taken to Mata Chanan Devi Hospital, Janakpuri by respondent No.2 and she was later shifted to Safdarjung hospital by her parents. The respondent Nos.2 & 3 are said to have threatened the petitioner for not giving any statement against them. The threatening by the respondent Nos.2, 3 & 4 persisted even after the petitioner was discharged from hospital. It was only later, it has been alleged, that the petitioner filed a complaint on 20.06.2005 to the DCP, South West, New Delhi. The complaint dated 27.06.2005 was also filed with the SDM, Najafgarh wherein the details of torture and harassment were given by the petitioner. Thereafter, a written complaint was sent to the SHO of the Dwarka police station, on the basis of which, the subject FIR was registered for investigation.

The case lodged by the petitioner was investigated by the Crime Branch whereafter chargesheet was submitted against all the respondents for offences under Sections 307/498A and 34 of the IPC. After the cognizance, the case was committed to the Court of Sessions for trial.

In the first instance, by order dated 28.03.2009, it was held that no offence under Section 307 was made out for trying the respondents and, therefore, the case was remitted to the Court of learned Metropolitan Magistrate for trial.

The aforesaid order of the learned Trial Judge was challenged before this Court vide Crl.Rev.P.391/2009 whereby the aforesaid order was set

aside. This Court was of the view that from the records of the case, it was clear that charges were made out under Section 307 IPC against the respondent No.2. The order, therefore, was set aside and it was directed that the case be sent to the Court of the learned Additional Sessions Judge for framing of charge under Section 307 IPC. However, the Court directed that all other charges would be framed in accordance with law, if made out.

Be it noted that before this Court, the challenge was only to the extent that respondent No.2 was not charged for offence under Section 307 IPC.

From the perusal of the complaint and the materials collected against the respondents, it appears that respondent Nos.2, 3 & 4 have made themselves liable for being prosecuted for offence under Section 498A of IPC whereas respondent No.2 is also liable to be tried for the offence under Section 307 IPC as he had tried to burn the petitioner which led her to suffer 40% burn injuries.

The respondent Nos.4 & 5 are the brother-in-law and sister-in-law of the petitioner against whom the charges appear to be vague, general and omnibus. In cases of matrimonial dispute, it is not uncommon that allegations are levelled against all the family members, nonetheless unless allegations are specific, it would rather be unsafe to put all those persons on trial for all the offences alleged.

While framing charges against the respondents in the manner aforesaid, the Trial Court took note of the fact that though allegations were made against respondent Nos.4 & 5 with respect to torture, harassment and dowry demand, but they were staying separately from the other respondents in Gurgaon. So far as the allegations of burning is concerned, it was limited to respondent No.2 only. There is no specific allegation in either the

complaint or in the police papers regarding offence falling under the mischief of Section 406 of the IPC.

Taking into account the aforesaid facts, charges were framed against the respondent Nos.2, 3 & 4 accordingly.

This Court finds no reason to interfere with the order framing charge.

The petition is dismissed.

ASHUTOSH KUMAR, J

JULY 19, 2017

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