

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

% Decided on: 12th May, 2017

+ **CRL.M.C. 2013/2016 & CrI.M.A. 8528/2016**

MAHESH & ORS

..... Petitioner

Represented by: **Mr. Augustine Chatterjee, Adv.**

versus

STATE OF NCT OF DELHI & ANR

..... Respondent

Represented by: **Mr. Ashok Kumar Garg, APP
with Mr. David Lalrinsanga, Jt.
CP SPUWAC, Insp. Seema
Singh, PS CWC, Insp. Ajay
Sharma, SHO/Mahendra Park
and SI Manoj Kumar PS
Mahendra Park.
Mr. Rajesh Kumar Luthra, Adv.
for complainant.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition, the petitioners who are facing trial in case FIR No.115/2011 under Sections 406/498A/34 IPC registered at PS Mahindra Park have challenged the order dated 13th October, 2015 passed by learned Metropolitan Magistrate allowing the application filed by the State along with the charge sheet seeking condonation of delay in filing the charge sheet and the order dated 9th December, 2015 passed by the leaned Additional Sessions Judge upholding the order dated 13th October, 2015 passed by the learned Metropolitan Magistrate.

2. During the course of arguments, learned counsel for the petitioner on instructions gave up his plea in respect of challenge to the condonation of delay and prayed that guidelines be laid down as invariably in all cases relating to FIRs registered for offences punishable under Sections 498A/406/34 IPC and/or under Sections 3/4 of Dowry Prohibition Act, charge sheets are invariably filed beyond the period of limitation because considerable time is spent first at the CAW Cell, then during the investigation awaiting the decision in anticipatory bail application or because the parties are exploring possibilities of a settlement. Suggestions were filed by the petitioner and also by the State. One issue on which learned counsels for the parties were unanimous is that there should be no pause in the investigation awaiting settlement talks.

3. The importance for providing conciliation so that the parties can iron out their disputes if possible at the CAW Cell at the pre-registration of FIR stage cannot be belittled. Only if the parties are not able to conciliate their differences and the complaint discloses commission of cognizable offences, recommendations are made for registration of the FIR to the police station concerned. Even after registration of the FIR, at every stage of investigation, efforts to negotiate a settlement or conciliate the differences is encouraged by the Courts but that does not mean that the investigation is set at knot and it should be kept pending which is the main reason for delay in filing of the charge sheets in most of the cases.

4. In the decision reported as (1993) 3 SCC 4 Vanka Radhamanohari Vs. Vanka Venkata Reddy Supreme Court held that matrimonial offences amounting to cruelty are continuing offences and the complaint even if filed belatedly cannot be held to be barred by limitation under Section 468 Cr.P.C.

warranting quashing of the same. Constitution Bench in the decision reported as (2014) 2 SCC 62 Sarah Mathew Vs. Institute of Cardio Vascular Diseases affirming the decision in Venka Radhamanohari (supra) further held that it is the date of the filing of the complaint which is material in criminal cases for the Court to judge limitation before taking cognizance.

5. Section 473 Cr.P.C. empowers the Court to take cognizance of an offence “after the expiry of period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice”.

6. In the decision reported as (2007) 13 SCC 165 Sanapareddy Maheedhar Seshagiri Vs. State of A.P. the Supreme Court held that in cases of complaints made by victims of matrimonial offences, the Courts must not take a narrow and pedantic view but exercise powers under Section 473 Cr.P.C. liberally.

7. Section 470(2) Cr.P.C. allows exclusion of the time period when there is a court order staying institution of prosecution. This provision is required to be employed where there is a court order staying prosecution in view of the mediation proceedings.

8. Supreme Court as well as this Court has consistently held that the denial of a fair and expeditious trial causes injustice not just to the accused but also to the victim and the society. See (2006) 3 SCC 374 Zahira Habibullah Sheikh (5) Vs. State of Gujarat, (2009) 1 SCC 441 Nirmal Singh Kahlon Vs. State of Punjab, (2015) 9 SCC 795 Mithilesh Kumar Singh Vs. State of Rajasthan, (2016) 2 SCC 402 State (NCT of Delhi) Vs. Shiv Kumar Yadav, 2014 SCC OnLine Del 794 State Vs. Sanjay Kumar Valmiki.

9. While considering Section 89 to the C.P.C. which also allowed for mediation, Supreme Court in the decision reported as (2003) 1 SCC 49 Salem Advocate Bar Association, T.N. Vs. Union of India held that mediation contemplates that all proceedings upto the stage of trial would in any event take place.

10. Whether a trial is necessitated or not to adjudicate the dispute would depend upon the outcome of the mediation, however all proceedings up to the stage of trial, that is investigation and filing of the charge sheet, must be undertaken irrespective of the fact whether mediation is underway or not unless there is a stay of proceedings by a competent court in which case recourse can be had to Section 470(2) Cr.P.C.

11. Section 7.3 of the Code of Practice of Victims of Crime in the United Kingdom which provides for the process of Restorative Justice also contemplates continuance of the criminal proceedings.

12. Thus, the usual practice of the police setting at naught an investigation pending mediation or conciliation proceedings between the parties is contrary to the spirit of the law. Though guidelines have been issued by the Joint Commissioner of Police, Special Police Unit for Women and Children, Nanakpura explaining the 'Dos and Don'ts' for carrying out investigation and monitoring thereof for matrimonial offences however there is no emphasis on the timeline even therein. Further during the course of present proceedings, the Commissioner of Police reiterated the Standing Order No.444/2016 which provides for instructions for expeditious investigation of cases in Delhi Police however the same is also not specific to cases related to matrimonial offences.

13. Though this Court finds that there can be no straight jacket formula for each case and the various steps in investigation cannot be bound by a time line but in the interest of justice and the fact that every complainant and the accused has a right of expeditious disposal of the complaint and the trial, this Court deems it fit to lay down the following guidelines-

- a) Whenever a complaint is received before the CAW Cell, short dates should be given to explore the possibility of a conciliation between the parties and the same should not extend like an endless exercise. Once an opinion is formed that any further conciliation at that stage is a fruitless exercise and if the complaint discloses commission of a cognizable offence, the complaint be referred to the police station for registration of the FIR. The exercise of exploring the possibility of a settlement before the CAW Cell be completed preferably within six months and in case more time is required if it appears that the parties are likely to settle the matter, reasons for extending the time should be recorded in the file.
- b) On registration of FIR, statements of witnesses of the complainant be recorded and the entire evidence to prove the allegations of cruelty, entrustment and misappropriation of the articles be collected expeditiously preferably within a period of 15 days to one month.
- c) In case the parties are negotiating a settlement again, reasonable time be given however filing of the charge sheet should not await the outcome of a probable settlement between the parties.
- d) In case the filing of the charge sheet is delayed beyond the period of limitation prescribed, the application seeking condonation of delay will be filed giving reasons for delay at each step.

14. Commissioner of Police will issue necessary Standing Order in this regard and circulate to all concerned.

15. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MAY 12, 2017
‘v mittal’

