

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

Date of decision: 25.1.2017

+ **W.P.(C) 6680/2016**

PRAKASH Petitioner
Through: Ms. Isha Khanna, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Dev P Bhardwaj, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J (ORAL)

1. In this writ petition, the petitioner has challenged a letter dated 10.5.2016, issued by the respondent No.2 to the petitioner, whereby the candidature of the petitioner for the post of an Assistant Commandant in the CISF (Central Industrial Security Force) has been cancelled.

2. Pursuant to an advertisement dated 06.07.2013, floated by the respondents in the Employment News, the petitioner applied for recruitment to the post of Assistant Commandant (Group-A) in the Central Armed Police Forces, hereinafter referred to as the CAPF.
3. In the application, which was submitted online, the petitioner duly disclosed the fact that there were two criminal proceedings pending against him (i) inter alia under Section 498A of the Indian Penal Code and (ii) under Section 354 of the Indian Penal Code.
4. Both the criminal cases referred to above, appear to have been instituted on the complaint of Ms. Anjali Suman, sister-in-law of the petitioner. The said proceedings are apparently the result of matrimonial discord between the said Anjali Suman and her husband Bhupinder, elder brother of the petitioner. Complaints were filed against all the family members, including the petitioner.
5. When the petitioner applied for the post of Assistant Commandant CISF, the petitioner was an officer of the Income Tax Department. The two criminal cases referred to above were, according to the petitioner, pending against the petitioner and his family members even at the time of appointment of the petitioner in the Income Tax Department. The petitioner was duly appointed in the Income Tax Department notwithstanding the pendency of the aforesaid cases.

6. The petitioner's application was processed after which an admit card with roll No.141804 was issued to the petitioner for the written examination, scheduled to be held on 20.10.2013. The petitioner appeared for the written examination.
7. By a letter dated 29.04.2014, the petitioner was informed that he had qualified in the written examination. The petitioner, thereafter appeared for a Physical Efficiency Test, as directed, which he successfully cleared.
8. The petitioner appeared for the Medical Standard Test/Medical Examination. By a memorandum dated 27.05.2014, the petitioner was informed that he had been found unfit due to polydactyl (extra finger in the right thumb).
9. The petitioner underwent surgery, after which he was again examined and declared medically fit. He was thereafter called for a Personality Test / Interview by a letter dated 23.6.2014. The petitioner duly cleared the Interview.
10. In terms of the letter calling the petitioner for interview, the petitioner was required to produce a 'No Objection' Certificate from his previous employer. However, since the Income Tax Department did not issue a 'No Objection Certificate' to the petitioner, the petitioner resigned from the Income Tax Department by a letter dated 08.07.2014.

11. By a letter of appointment dated 10.12.2014, the petitioner was informed that on the basis of his performance in the written examination and the interview, he had provisionally been selected for appointment to the post of Assistant Commandant/Exe in the CISF (Central Industrial Security Force) in the pay-scale of Rs.15600-39100 at Grade Pay of Rs. 5400.
12. The petitioner, however, did not receive any call to join the training for the post of Assistant Commandant in the CISF. The petitioner, therefore, approached the respondents, but got no response.
13. It is pleaded that in June, 2015, some police officials visited the residence of the petitioner for verification of his character and antecedents. The petitioner states that he informed the said police officials that there were two FIRs against him, which were the outcome of the matrimonial discord between his brother and his brother's wife.
14. However, the petitioner was forwarded a copy of an internal communication dated 02.07.2015, addressed to the Deputy Commandant informing him that at the time of character verification of the petitioner, it had transpired that there were two criminal cases pending against the petitioner.

15. It is nobody's case that the petitioner had suppressed the criminal proceedings. Rather, it is admitted that the petitioner had fairly disclosed that two criminal proceedings were pending against him.
16. There can also be no dispute that the criminal proceedings are the direct outcome of matrimonial disputes and discord between the petitioner's sister-in-law, the complainant in both the cases and her husband, being the elder brother of the petitioner.
17. It is true, as argued on behalf of the respondent that charge-sheet has been issued against the petitioner in respect inter alia of charges under Sections 498, 354 and 307 of Indian Penal Code. The charges are undoubtedly serious charges.
18. However, the foundation of the proceedings is the FIR lodged by the petitioner's sister-in-law. The thrust of the allegations in the two FIRs are against the complainant's husband and her parents-in-law. However, all the family members have been arrayed as accused.
19. In the fairly voluminous written complaints, which are mainly directed against the complainant's husband and her parents-in-law, and contain some allegations against her elder brother-in-law Brij Mohan and his wife Minakshi, there are no specific allegations against the petitioner.

20. The allegations against the petitioner are of a general nature devoid of particulars. It is alleged that the petitioner was dissatisfied with the quality of gifts given by the complainant's family to the complainant and/or her in-laws at the time of marriage. It is also alleged that the petitioner instigated his brother, that is the complainant's husband, to ill treat her. There is no whisper of the manner, in which the petitioner instigated his brother.
21. It has also been alleged in the complaints that on one occasion, when the complainant had raised her voice in protest against wrong done to her, her in-laws including the petitioner had entered her room and beaten her. Details have been given of how exactly she was assaulted by her husband, father-in-law, mother-in-law and even elder brother-in-law. There is nothing specific against the petitioner. Some stray allegations have been made against him. He is alleged to have beaten the complainant along with the other members of the family.
22. In this context it would, perhaps, be pertinent to refer to Section 498A of the Indian Penal Code set out hereinbelow:-

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.”

23. It is only conduct of such nature, which is likely to cause a woman to commit suicide, or to cause grave injury or danger to her life, limb or health, whether mental or physical, or harassment of a woman to coerce her or any person related to her to meet unlawful demands for property or valuable security or for their failure to do so, that attracts Section 498A.
24. There can be no doubt that ill-treatment of a bride is deplorable. A bride becomes a part of her matrimonial family. She should be treated with love, affection and care as a family member. Physical violence on a woman is reprehensible.
25. However, all disputes and differences do not come within the purview of Section 498A, and definitely not the raising of a voice or the hand in course of a fight on a single occasion. Dissatisfaction with gifts, in the absence of anything more, cannot

in itself amount to such cruelty as to attract Section 498A of the Indian Penal Code.

26. Moreover when all family members are named in a complaint and the allegations are of a general nature, the allegations are required to be analysed to examine if ingredients of offence under Section 498A of the Indian Penal Code have been made out against all of them, and if so, whether there is prima facie credibility in the allegations.
27. The allegations leveled by the complainant against her parents-in-law, her husband and others may tantamount to offence under Section 498A, but not the allegations levelled against the petitioner. Similarly, the allegations made by the complainant do not make out any offence under Section 354 of the IPC against the petitioner. The allegations in the complaints prima facie appear to be grossly exaggerated.
28. Mr. Bhardwaj appearing on behalf of the respondents submitted that charge-sheet had been issued against the petitioner for serious offences under Sections 498A, 354 and 307 of Indian Penal Code. The fact that charge-sheet has been issued against the petitioner, in itself shows that there were materials against the petitioner. Moreover, the petitioner could have got the charges quashed in

appropriate revisional proceedings under the Criminal Procedure Code, had the same been frivolous.

29. There can be no doubt that offences under the Sections referred to above, that is Sections 498A, 354 and 307 of the Indian Penal Code are serious. However, most of the allegations against the petitioner do not make out any offence under the aforesaid Sections. The complainant only made some vague and stray allegations against the petitioner of infringement of Sections 498-A, 354 and 307 of the Indian Penal Code. The allegations against the petitioner have not been proved.
30. Counsel appearing on behalf of the respondents submitted that the petitioner could have filed criminal revisional application for quashing of the charge-sheet. However, it is well settled that a charge-sheet is not ordinarily interfered with at the pre-trial stage. It is only in exceptional cases, where the allegations, taken to be true, do not at all disclose any ingredients of the offence with which the accused may have been charged, that the charges may be quashed. In a criminal revisional application, the Court does not examine if there is any credibility in the allegations against the petitioner.
31. In any case, what the petitioner could have done is not the question. The question is, whether the petitioner has committed

any of the offences with which he has been charged. A person is in our criminal jurisprudence, is presumed to be innocent unless proved guilty beyond all reasonable doubt. The FIRs are composite FIRs implicating all the members of the family. The petitioner has also been named. Moreover, the charges against the petitioner are still not proved.

32. In *Preeti Gupta and another Vs. State of Jharkhand and Another* reported in 2010 (8) SCALE 131, the Supreme Court held as under:-

“28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

.....

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

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33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent.

To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection."

33. Suffice it to note that it would be grossly unfair and arbitrary to deny the petitioner appointment, just because criminal proceedings are pending against him. The petitioner cannot be responsible for wrongful acts if any of the members of his family, particularly his parents and his brother. Until and unless the petitioner is convicted in the criminal proceedings initiated against him, he cannot be denied appointment.
34. In ***MD Nidhi Kaushik Vs. Union of India and Others*** reported in 2014 (212) DLT 5 a Division Bench of this Court held that cancellation of appointment on the ground of pendency of proceedings under Section 12 of the Protection of Women Against Domestic Violence Act, 2005, was unjustified. On a parity of reasoning cancellation of appointment on the ground of pendency

of proceedings under Section 498A and 354 of the Indian Penal Code is also unjustified and more so, having regard to the nature of the allegations made against the petitioner in the complaints.

35. The writ petition is allowed. The letter dated 10.05.2016, is set aside and quashed. The respondent shall immediately appoint the petitioner to the post, to which he has been selected, if he is otherwise eligible. The appointment of the petitioner shall abide by the final result of the pending criminal proceedings and in the event the petitioner is convicted, necessary steps may be taken in accordance with law for termination of the services of the petitioner.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

January 25 , 2017/n