IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43589-2016 (O&M)
Date of Decision: 25.09.2018

Meghna Gill

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.N. Lohan, Advocate
for the petitioner(s).

Mr. Arun Kumar, A.A.G., Haryana.

Mr. Bhoop Singh, Advocate
for respondent No.2.

****

ANITA CHAUDHRY, J

Petitioner is seeking quashing of FIR No.736 dated 16.09.2015 registered under Sections 498-A, 406 IPC at Police Station Jind City, District Jind and all the subsequent proceedings arising thereto.

Notice of motion was issued to the respondents. Reply has been filed by the State. No reply was filed by respondent No.2.

Learned counsel for the petitioner submits that petitioner is the married sister-in-law, being the sister of husband of the complainant and marriage of the complainant took place with the brother of the petitioner in the year 2010, while the petitioner got married in 2007. Counsel submits that general and vague allegations have been levelled and Section 498-A is

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document

not attracted and there are no specific allegations that dowry articles were entrusted to her. Counsel further submits that trivial allegations have been levelled and the complainant was living in the petitioner's house in Delhi and using all the facilities in her home and only because there was difference with the husband, she had also been named. Counsel refers to the FIR and urges that allegations are that the petitioner did not allow the complainant to give the landline number to her acquaintances, that an outsider could not come to this house and that she was not allowed to fast on Thursdays or that she was not allowed to watch TV, would not attract Section 498-A IPC and the police was not justified in filing the challan against the sister-in-law and the police has been insensitive in this case.

Per contra, the submissions on behalf of the complainant were that it is not only physical cruelty but mental cruelty which falls under Section 498-A IPC and the allegations are serious and the petitioner used to dominate and did not allow the complainant to use the phone and she was not allowed to keep fast and was forced to make egg on Tuesdays and nobody took care of her when her blood pressure became low and it should be left to the trial Court to go into the allegations based on the evidence that would be led by them.

The State counsel submits that challan had already been submitted.

Having heard the learned counsel for the parties at considerable length and after careful perusal of the lengthy FIR and giving thoughtful consideration to the contentions raised, I am of the considered opinion that keeping in view the totality of facts and circumstances of the case, it is a fit

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document

case to quash the FIR. It is necessary to notice the nature of accusations, some of which are noted as under:-

1. That the petitioner did not allow the complainant to give the landline number to her acquaintance and she was asked not to give the house address to anyone.
2. The complainant was not allowed to keep fast on Thursdays.
3. Taunts were thrown when she lit a *dia* (Candle) and she was told that it was polluting air.
4. The complainant was weeping throughout the day after the husband got angry at her and the petitioner did not console her and rather she was in another room and was laughing.

It is now necessary to notice Section 498-A IPC. The provisions of Section 498A IPC read as under :

> *"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 purposes of this section `cruelty' means-*
> *(a) any welful 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;*
> *(b) harassment of the woman where such harassment is with a view to coercing her to 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."*
> *Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :*

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document

> *(i) any `wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or*
> *(ii) any `wilful' conduct which is likely to cause grave injury to the woman; or*
> *(iii) any `wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.*

In Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078; it was held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

"Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the person, weighing the gravity or seriousness of the acts and it is to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as `cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty".

The instant case is required to be examined by taking into consideration the provisions of Section 498-A IPC and the settled legal provisions. On going through the allegations some of which have been noted above, it will be seen that it is a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. for more than one reasons.

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document

It is a matter of record that petitioner was married sister-in-law of the complainant, married much prior to the marriage of the complainant. The complainant started living in the petitioner's house in the official accommodation allotted to her. The incidents referred to in the FIR are skirmishes and petty in nature.

The allegations levelled against the petitioner even if taken to be true on their face value, do not fall under the definition of cruelty. This case is a glaring example of the unwarranted tendency to implicate maximum members of the family of the husband at the hands of estranged wife. In a case under Sections 498-A and 406 IPC, the police arrayed the petitioner as an accused without going into the allegations, which did not attract Section 498-A. They were not justified in filing the challan against the petitioner. They have been insensitive. It is a case of over implication of the petitioner. The police officials need to be sensitized and they have to understand that it causes insurmountable harassment, agony and pain when a party has been wrongly framed. The officials were lacking in their duties and did not care to find out the truth. The Courts on various occasions have expressed their displeasure and the officials need to discharge their duties with utmost care. The Courts have been flooded with number of petitions, where police has challaned the family members without understanding that it causes social unrest in the society.

Looking at the allegations, I would unhesitatingly hold that the continuation of the criminal proceedings against the petitioner would certainly amount to misuse of the process of the Court and will result in

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document

miscarriage of justice and the same cannot be permitted to continue any further.

As such FIR *qua* the petitioner is quashed. Resultantly, the present petition is allowed.

September 25, 2018 **(ANITA CHAUDHRY)**
ps-I **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

POOJA SHARMA
2018.10.04 17:02
I attest to the accuracy and
integrity of this document