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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th October, 2018

+ CRL. M.C. 456/2018 & CrI.M.A. 8141/2018

MRS. SHALINI SARDANA Petitioner

Through: Mr. Vikas Chhabra & Mr.
Satender Singh, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State with ASI Aman Kumar,
PS CWC, Nanak Pura.
Mr. Anshuj Dhingra, Adv. for
R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had lodged first information report (FIR) no. 38/2009 with police station Crime against Women Cell (CWC), Nanak Pura on 07.03.2009 alleging offences punishable under Sections 498A/406/34 of Indian Penal Code, 1860 (IPC) having been committed qua her by the second to fifth respondents. It may be mentioned here itself that she (the complainant) was married to Somesh Sardana on 22.01.1999. During the period of her cohabitation, two children had taken birth, the first in July 2001 and the second in July, 2008. Her husband (Somesh Sardana) died on 26.11.2008 after prolonged illness.

2. In the FIR lodged after the death of her husband, allegations were made levelled respecting commission of above-mentioned offences against the second respondent (father-in-law), the third respondent (married sister-in-law – *Nanad*), fourth respondent (sister-in-law *Nanad* who got married on 06.11.2000) and fifth respondent (the mother-in-law). The police submitted the final report of investigation under Section 173 of the Code of Criminal Procedure, 1973 in August, 2010 against the said four private party respondents. The Metropolitan Magistrate having summoned them considered the question of charge on the basis of material submitted with such final report (charge-sheet). By order dated 06.08.2016, however, she concluded that no charge was made out against any of the said persons for offences under Section 498 A/34 IPC. She also found charge not to be made out for offences under Sections 406/34 IPC against the second to fourth respondents (the private party respondent) who were consequently discharged. Charge for offence under Section 406 IPC, however, was framed against the fifth respondent (the mother-in-law) thereby taking the case to trial against her.

3. The petitioner assailed the above-mentioned order dated 06.08.2016 of the Metropolitan Magistrate before the court of Sessions (by CrI.Rev. 243/2017). The said petition was dismissed by order dated 12.10.2017. It is against the said orders that the petitioner has come up to this Court by the petition at hand seeking directions for trial to be held against the four private party respondents for offences under Sections 498A/406/34 IPC.

4. Having heard the learned counsel on all sides, and having gone through the record, this Court finds no error or infirmity in the view taken by the two courts below. Charge is not to be framed just for the asking. There has to be cogent and credible *prima facie* evidence presented to support the accusations on the basis of which the accused can be put on trial. The case for trial of the respondents for offence under Section 498A pressed by the petitioner fails on this muster.

5. The petitioner was married, as mentioned earlier, to Somesh Sardana on 22.01.1999. It is clear from her own statement and other material on record that the marriage was preceded by a love affair between the two of them. It was thus a marriage of choice. According to her version, the family of the deceased husband was opposed to the matrimony. In these circumstances, the husband being wholly supportive of her, the question of demand or harassment for dowry would have been a matter of remote possibility.

6. Be that as it may, going by the averments in the complaint, it appears the dispute within the family related to non-cooperation by the respondents with the husband of the petitioner, they not helping him out even while he was facing critical health problems. She made allegations of certain acts of commission or omission intending to show cruelty having been meted out to her. But there is no explanation worth the name as to why no action was initiated in such regard within reasonable time of such conduct having been indulged in. Noticeably, the marriage took place on 22.01.1999. The petitioner was silent till after her husband had died on 26.11.2008. After having lived in a matrimonial home for a period of almost ten years, without

any explanation for delay, raises question mark as to the credibility of the complainant's version, forming the basis for the criminal action so initiated. As observed by the Metropolitan Magistrate in the impugned order, all the allegations relevant to the offence under Section 498A IPC are general and non-specific. No specific incident is mentioned as to when the illicit demands were raised. There is no specific individual to whom demands against the backdrop of marriage of the fourth respondent were attributed, nor the amount of money demanded indicated. Similar is the deficiency in the context of alleged pressure exerted on the complainant and her husband for arrangement of money for a bigger house or for transfer of the house in the name of the sister-in-law. The incident of 29.10.2008 was allegedly followed by threats extended, allegations in which regard are also general in nature.

7. In above facts and circumstances, the approach of the Court of Magistrate, and of the revisional court, in declining to put the respondents on trial for offence under Section 498A/34 IPC cannot be faulted.

8. It is clear from the version of the petitioner herself that the entrustment of dowry and other property belonging to her is attributed to the fifth respondent only. There is no evidence showing any complicity or sharing of common intention on the part of others. Thus, the impugned orders discharging the rest of the accused persons do not call for any interference. The magistrate has taken correct view to put the fifth respondent alone on trial on the charge for offence under Section 406 IPC.

9. There is no case made out for any interference by this Court under Section 482 Cr.P.C. The petition and the pending application are dismissed.

R.K.GAUBA, J.

OCTOBER 30, 2018

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