

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

% *Reserved on: 11th January, 2018*
Decided on: 12th October, 2018

+ **W.P.(CRL) 431/2016**

MANISH KALRA & ORS Petitioners
Represented by: Mr. Saurabh Tiwari, Advocate.

versus

STATE & ANR Respondents
Represented by: Ms. Purnima Malik, Advocate for Mr.
Avi Singh, Additional Standing
Counsel for the State/Respondent
No.1 with SI Ram Singh, PS C.R.
Park.
Ms. Shilpika Kalra/ respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition, the petitioners seek quashing of FIR No.390/2014 under Sections 498A/406 IPC registered at PS Chitranjan Park, Delhi on the complaint of respondent No.2.
2. Learned counsel for the petitioners contends that the FIR got registered by respondent No.2 at Delhi is a clear abuse of the process of law. Even accepting the averments in the complaint, no case for cruelty as defined under Section 498A IPC is made out. The FIR discloses no allegations against the petitioners especially petitioners No.3 and 4 except for casual references of their names. Petitioners No.2 to 4 never resided with the respondent No.2 at the matrimonial home. The matrimonial home of the petitioner No.1 and respondent No.2 was at Mumbai whereas petitioners No.3 and 4 have been residents of Singapore from 2008-2014 and Hong Kong since 2014. The pleas taken by the petitioner for quashing

of FIR are not in the nature of defence nor are disputed questions of facts. Since it is the admitted case of the respondent No.2 that petitioner No.1 and respondent No.2 have not resided together since the year 2009, thus the allegations are at least 5 years prior to the registration of the FIR. FIR has been got registered after 5-6 years of the date of allegations and thus cognizance on a charge-sheet filed on such allegations would be barred by limitation as per Section 468 of the Code of Criminal Procedure. Reliance is placed on the decisions reported as (2008) 11 SCC 520 M. Saravana Porselvi Vs. A.R. Chandrashekhar & Ors.; (2013) 14 SCC 374 Chandrlekha & Ors. Vs. State of Rajasthan & Ors. and (2014) 13 SCC 567 Swapnil & Ors. Vs. State of Madhya Pradesh. Divorce proceedings are pending before the Mumbai Court filed by the petitioner No.1 in June 2009 and till date respondent No.2 has not claimed any istridhan in the said proceedings at Mumbai.

3. Though no affidavit in response to the petition has been filed by the respondent No.2, she has filed an affidavit disclosing that the three petitioners did not appear in the Mediation proceedings referred to by this Court in the present petition, though the respondent No.2 went all the way from Delhi to Mumbai.

4. The allegations of the respondent No.2 in the above-noted FIR are as under:

“I Shilpika Kalra, on my complaint appeared in CAW Cell on 15.9.2014 at 11.30 a.m. My in-laws have not appeared in spite of being informed. I was married to Manish Kalra under Hindu Rights was arranged & on 28.7.2007 in Delhi Cantt. On the wedding my family & widow mother of Late Brig S II Grover gave cash & gift as per their standard & standard of my in-laws. After marriage I resided in J-1902 CR Park where my

mother-in-law demanded my salary & mentioned she received all white goods for her marriage from her brother when she got married. My mother should set up my house. They also insulted me that their elder son was married Taj Hotels & my mother did not do the needful. All expensive Omega watches, designer gifts & cash gifted were not appreciated. After the marriage I took a transfer from DNA Newspaper Delhi & relocated to Mumbai to join my husband. He deserted me on June 10, 2009 & filed a frivolous petition for divorce. My Stridhan is with my mother-in-law Kamlesh Kalra, Avinash Kalra, Suman Kalra. My mother-in-law resides & is in the possession of my Stridhan. Mrs. Kamlesh Kalra (all responsible to influence my husband). Kindly also ask Mrs. Kamlesh Kalra to return my Stridhan. She is instrumental in influencing my husband to file a divorce petition. Next date 19.0.2014 at 11.00 AM. Sd/- Shilpika Kalra, J-1902, C.R. Park, New Delhi. 9920389955."

5. The case of the petitioner is that Avinash Kalra and Suman Kalra have not been residing in Bombay and thus have no role to play. After investigation charge-sheet has been filed by the State keeping petitioners No.1 and 2 in column No.11 and petitioners No.3 and 4 in column No.12. Petitioners No.3 and 4 who were kept in column No.12 have not been summoned by the learned Trial Court. Hence, the present petition seeking quashing of FIR and the proceedings pursuant thereto is rendered infructuous. Needless to note that in case if at any stage of trial petitioners No.3 and 4 are summoned the same will be a separate cause of action for which they can avail remedies as available in law.

6. In *M. Saravana Porselvi (supra)* relied upon by learned counsel for the petitioner the parties were married on 1st December, 1993 and were living separately since 1996. They entered into an agreement for divorce as per custom around 24th July, 1996 which was registered and the complainant

therein received the permanent alimony amount which was duly acknowledged. The complaint was filed in May 2006 on the premise that the first respondent married for the second time. It is on these facts the Court said that after more than 10 years of separation no case under Section 498A can be said to be made out and that too at such a distant point of time, particularly in view of the bar of limitation as contained in Section 468 Cr.P.C.

7. In (1993) 3 SCC 4 Vanka Radhamanohari Vs. Vanka Venkata Reddy the Supreme Court dealing with the bar of Section 468 Cr.P.C. in relation to the matrimonial offences held as under:

“7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh [(1981) 3 SCC 34 : 1981 SCC (Cri) 625 : AIR 1981 SC 1054]. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as

to whether the delay has been properly explained, but as to whether “it is necessary to do so in the interests of justice”.”

8. In the decision reported as 2003 (68) DRJ 437 Asha Ahuja Vs. Rajesh Ahuja & Ors. this Court dealing with the accused being discharged on the ground of limitation under Section 468 Cr.P.C. read with Section 473 Cr.P.C. held that Section 473 Cr.P.C. enjoins a duty upon the Court to examine not only as to whether delay in filing of the FIR is explained or not but also whether it is the requirement of justice to condone or ignore the delay and in matrimonial cases if the bar of Section 468 Cr.P.C. is pleaded the Court is required to apply its mind on the question as to whether it is necessary to condone the delay in the interest of justice. In the said case this Court considered the following reasons in the complaint to condone the delay as under:

“6. A perusal of the complaint filed by the petitioner in the present case shows that soon after her marriage, the respondents had started taunting and harassing her for bringing insufficient dowry and warned her of serious consequences if more articles like refrigerator, washing machine, scooter etc. were not brought. She was humiliated, abused and tortured by them and was literally treated as a maid servant. She was given beatings also. She lost her health and in the meanwhile, became pregnant but before her delivery, she was forced to leave her matrimonial home. Her husband changed his religion even with a view to re-marry but thereafter, was made to re-convert and become a Hindu. The petitioner came back to her matrimonial home in March, 1987 but after a few weeks again, her harassment for bringing more dowry articles commenced. In August, 1991, she was again thrown out of her matrimonial home along with her children and thereafter, continuous efforts were made to persuade her husband and in-laws to take her back along with the children but the respondents kept on dilly-dallying. Her husband filed a

suit for divorce as well as custody of children and thereafter alone the complainant-petitioner felt compelled to initiate present proceedings against her husband and family members. Considering the circumstances under which the complainant-petitioner had been put and her constant desire to go back to her matrimonial home, it was a fit case in which the Courts below ought to have condoned/ignored the delay in the filing of the complaint under Section 498-A IPC.”

9. Further, Supreme Court in (1999) 4 SCC 690 Arun Vyas Vs. Anita Vyas held that the essence of the offence in Section 498-A is cruelty as defined in the explanation appended to the said section and is a continuing offence and on each occasion on which the respondent was subjected to cruelty a new starting point of limitation starts. It was held that :

“13. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988 when, on the allegation made by the respondent in the complaint to the Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995, therefore, it was clearly barred by limitation under Section 468(2)(c) CrPC.”

10. Further dealing with Section 406 IPC this court in 2010 SCC OnLine Del 4384 S.K.Bhalla & Ors. Vs. State of NCT of Delhi & Anr. held that Section 406 being a continuing offence as defined under Section 472 IPC the bar under Section 468 Cr.P.C. was not applicable. It was held that :

“14. No doubt Section 468 Cr.P.C. provides limitation of three years for taking cognizance of the offences which are punishable for the maximum imprisonment of three years. This provision, however is of no help to the petitioners for the reason that as per the allegations in the FIR, the petitioners have also committed an offence punishable under Section 406 IPC by misappropriating the ‘Stree-dhan’ of the complainant entrusted to them and not returning it to her despite of repeated demands. Section 472 Cr.P.C. is relevant in this case, which reads thus:

“472. Continuing offence.—In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues”

15. Perusal of the FIR would show that the complainant has made specific allegation that despite her demands, the petitioners have failed to return her ‘Stree-dhan’ and jewellery. She has not specified the date on which the demand was made. Section 406 of IPC deals with the offence of criminal misappropriation and the aforesaid offence is complete when the entrusted property is not returned by the persons who were entrusted with the property on demand by the rightful owner. Thus, though the FIR discloses the commission of offence under Section 406 IPC, it does not specify on which date the demand for return of ‘Stree-dhan’ was made as such it is not clear when the offence of criminal misappropriation was complete. This obviously is a subject matter of investigation and evidence pertaining to the same is to be seen in the charge sheet. Otherwise also, even if it is presumed that demand for return of ‘Stree-dhan’ was made in November, 1992, then also, till the ‘Stree-dhan’ of the complainant is returned to her, the misappropriation by the petitioners continues. Thus, fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Therefore, prima facie, it cannot be said that the FIR pertaining to the offence punishable under Section 406 IPC is time barred. It is well settled that delay in filing of FIR by itself cannot be a ground for discharge or acquittal of

the accused. There can be many reasons for delay in filing of the complaint. It would not be appropriate to speculate on this aspect. If the complainant/prosecution is able to explain the delay, then the court would be well within its rights to act on the evidence led during trial and that explanation, if any, can come only during trial. Thus, under the circumstances, I do not find any merit in the contention of learned counsel for the petitioners that the offence complained of in the FIR is barred by limitation in view of Section 468 Cr.P.C.”

11. As noted above, the allegations of the complainant are of harassment by the petitioners No.1 and 2 i.e. the husband and the mother-in-law. Admittedly the respondent No.2 and petitioner No.1 are living separately since June 10, 2009 and there is no material to show that due to reconciliatory measures or for what reason the respondent No.2 failed to file the complaint on which the afore-noted FIR was registered till 28th January, 2013, i.e. beyond the period of limitation of three years. Thus there being no justification for the delay in filing the complaint beyond the period of limitation and there being no allegation that the physical and mental harassment continued against respondent No.2 beyond June 10, 2009, petitioners No.1 and 2 are not liable to be proceeded under Section 498-A IPC. However, as noted above, Section 406 IPC is a continuing offence and every day of non-return of the istridhan articles would give fresh cause of action. Admittedly, after the registration of the FIR petitioner No.1 sought to return certain istridhan articles thereby fortifying the claim of breach of trust. However, one of the necessary ingredients for offence punishable under Section 406 IPC is entrustment and the complainant alleges entrustment of istridhan articles to petitioner No.2 and not petitioner No.1.

12. Thus, this Court finds no ground to quash the FIR in question against petitioner No.2 for offence punishable under Section 406 IPC or the proceedings thereto.

13. Petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

OCTOBER 12, 2018
‘ga/rk’

