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

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Judgment delivered on: 30.01.2018

+ CRL.M.C. 1070/2017

+ CRL.REV.P. 192/2017

ANJUMNISSA

..... Petitioner

versus

STATE & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Arshdeep Singh with Mr. Hitesh Rai, Advocates.

For the Respondents : Mr. Akshai Malik, APP for State.
Mr. Nikas Sharma, Advocate for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
30.01.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.M.C. 1070/2017 & CRL.REV.P. 192/2017, Crl.M.A.4475-76/2017 (stay)

1. Reply filed by the respondent Nos.2 to 4 is taken on record.
2. By these petitions, the petitioner impugns Order On Charge dated 03.11.2015, passed by the Court of Metropolitan Magistrate discharging Mohd. Asif (Brother-in-law) of the commission of offence punishable under Section 498-A/406 IPC. Petitioner is further

aggrieved by order dated 03.12.2016 of the Revisional Court discharging the other accused Mohd. Harun (Father-in-law), Begum Khusmida (Mother-in-law) and Mohd. Hasim (Husband) of the offence punishable under Section 498-A/406 IPC.

3. The impugned Order On Charge dated 03.11.2015 discharges Mohd. Asif on the premise that nowhere it is stated that he had demanded dowry specifically or he was entrusted with *istreedhan* articles.

4. The impugned Order dated 03.12.2016 of the Revisional Court discharges Mohd. Harun (Father-in-law), Begum Khusmida (Mother-in-law) and Mohd. Hasim (Husband) on the premise that there are no specific allegations to show as to in what way the accused persons used to harass or commit cruelty upon the petitioner and there was nothing on record to *prima facie* show that the petitioner had been coerced by the accused persons to meet their unlawful demands of dowry.

5. The Revisional Court was of the view that the mere demand of dowry by itself is not cruelty. For this observation, reliance was placed on the decision of this Court in *Sanjeev Kumar Aggarwal & Ors. vs. State & Anr.*: 2008 II AD (Delhi) 586. Further, it has been held that there is no specific allegation as to entrustment of *istreedhan* articles to the accused persons and in the absence of any specific allegations as to entrustment of *istreedhan* articles, no *prima facie* case under Section 406 IPC was held to be made out. Accordingly,

the above said accused were discharged.

6. At the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court does not have to, at that stage, appreciate the probative value of the material or the evidence to conclude whether the evidence is sufficient or not for convicting the accused.

7. In the present case, in the FIR, it is contended that the petitioner was married to Mohd. Hasim on 26.04.2009. It was agreed that the *vidaai* would take place after one year. When the period of one year elapsed and the petitioner's father approached the respondents for the purpose of *viddai*, demand for money was made. It is contended that the accused demanded Rs.21 lakhs in cash and property worth approximately Rs.30 lakhs. It is specifically averred that the demand was made on 23.03.2010 and, on 24.03.2010, the accused Harun (Father-in-law), Begum Khusmida (Mother-in-law), Mohd. Hasim (Husband) and the accused Asif (Brother-in-law) specifically made a demand and stated that unless the demand was met, they would not permit the *Rukhsati/Vidaai* and would get Mohd. Hasim married somewhere else.

8. In the statements of various witnesses *inter alia*, the wife and her father, recorded under section 161 CrPC, the allegations of the FIR have been reiterated.

9. Section 161 statement of Mohd. Iqbal (father of the girl)

specifically enumerates the number of articles including gold jewellery, silver articles, clothes, motorcycle and cash alongwith other household gift items *inter alia* TV Fridge, Sofa, given to the accused persons. The statement specifically names the accused persons.

10. The findings of the Trial Court that there are no allegations against Mohd. Asif are not substantiated in view of the allegations in the FIR as well the statements recorded under 161 CrPC. Further, the findings of the Revisional Court that there is nothing on record to show that the petitioner was coerced to meet their unlawful demand of dowry, is clearly not substantiated. The allegation that the accused refused to perform the *Rukhsati/Vidaai* ceremony unless the demands of dowry were met would amount to harassment. A married woman if told that she would not be taken to her matrimonial house unless she meets the demand of dowry would suffer cruelty, as required under Explanation (b) to Section 498-A IPC. Further, section 161 Statement of Mohd. Iqbal specifically refers to certain articles comprising of gold jewellery, motorcycle, household items and cash being given to the accused persons.

11. *Prima facie*, there is sufficient ground for proceeding against the accused persons under Section 498-A/406/34 IPC.

12. In view of the above, the impugned Order On Charge dated 03.11.2015 of the Trial Court and impugned Order dated 03.12.2016 of the Revisional Court are not sustainable and are accordingly set aside.

13. List the matter before the Trial Court for framing of charge on 15.02.2018.

14. It is clarified that this Court has not expressed any opinion on the merits of the allegations of the complainant or the defence of the accused. The accused are, accordingly, directed to appear before the Trial Court on 15.02.2018.

15. Keeping in view the facts that the FIR was registered as far back as in the year 2010 and nearly 8 years have elapsed, the Trial Court is directed to expedite the trial and an endeavour shall be made to conclude the same within a period of 9 months from today.

16. The Trial Court record be transmitted back to the Trial Court forthwith.

17. The petitions are, accordingly, disposed of.

18. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J
JANUARY 30, 2018/st