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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th July, 2018

+ CRL. M.C. 2544/2018 & CRL.M.A. 9048-9049/2018

RAJESH BAJAJ ALIAS RAJESH KUMAR Petitioner
Through: Mr. Rajesh Yadav with
Mr. Ruchira Arora & Mr.
Dhananjay Mehlawat, Advocates.

versus

STATE & ANR Respondents
Through: Mr. Arun Kumar Sharma, APP
for State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is facing prosecution in criminal case arising out of FIR No.446/2013 of P.S. Saket under Sections 498A/406/34 of Indian Penal Code, 1860 (IPC) registered on the basis of report under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on 26.09.2016 by the investigating agency. The Metropolitan Magistrate *in seisin* of the case had taken cognizance on the said report and summoned the petitioner and three others as accused. By order dated 01.11.2017, she framed charges under Sections 498A/406 IPC against the petitioner and separate charges under Section 498A against the two co-accused discharging the fourth accused finding no grounds to substantiate the allegations.

2. The petitioner and the other two accused against whom the charges were thus framed challenged the said order before the court of Sessions invoking its revisional jurisdiction under Section 397 of Cr.P.C. (Crl. Revision No.457/2017). The said petition was disposed of by the court of Sessions by order dated 28.03.2018 upholding the order framing charge against the petitioner but setting aside the same against two other accused thereby discharging them.

3. The petitioner has come up to this Court invoking the extraordinary jurisdiction under Section 482 Cr.P.C. to assail the order dated 28.03.2018 of the revisional court.

4. The learned counsel for the petitioner submitted that the allegations in the case by the complainant Sanju Bajaj (wife of the petitioner) are ill conceived, unfounded and incredible for the reason the parties were married to each other on 05.12.1985 and out of their cohabitation children took birth, the complainant having made allegations of cruelty, including on the ground of demand of dowry, even against her own elder sons. Reliance is placed on judgments reported as *Basant Kaur v. State (NCT of Delhi)*, 2002 (101) DLT 470 Lawpack; *Chandralekha & Ors. v. State of Rajasthan & Anr.*, (2013) 14 SCC 374; *Shakson Belthissor v. State of Kerala & Anr.*, (2009) 14 SCC 466 and *Preeti Gupta & Anr. v. State of Jharkhand & Anr.* (2010) 7 SCC 667.

5. While it does appear that the allegations of demand of dowry by her own sons, stated to be in concert with the petitioner, seem a little out of place requiring closer scrutiny, it has to be kept in mind that the charge under Section 498A IPC which has already been framed, does

not depend entirely on a case being made out of cruelty arising out of such illicit desire of the accused. For purposes of the penal clause in Section 498A IPC, the expression “*cruelty*” has been defined by the explanation and includes 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. In the evidence which has been gathered during the investigation, the complainant is shown to have been subjected to continuous harassment, such acts representing *prima facie* wilful conduct of the nature mentioned above.

6. Be that as it may, against the above backdrop a more fundamental question arises as to whether the petitioner having availed of the remedy of revision should be allowed to take recourse of Section 482 Cr.P.C. as a substitute for bringing virtually a second revisional challenge or scrutiny which is clearly barred under Section 397(3) Cr.P.C.

7. This Court in almost similar fact situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241; *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522 and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571 and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99, in absence of a special case being made out, has earlier declined to interfere by the ruling (dated 03.07.2018) in CrI.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi &*

Ors. in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

8. There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed. The petition and the pending applications are dismissed.

R.K.GAUBA, J.

JULY6, 2018

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