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

Reserved on: 24th July, 2018
Pronounced on: 24th August, 2018

+ CRL.M.C. 3040/2011 & CRL.M.A Nos. 14296/2012,
4418/2013

KUHU PANDYA & ANR Petitioners

Through: Mr. K. Sultan Singh, Sr. Adv.

versus

STATE NCT OF DELHI & ORS Respondents

Through: Mr. Ashish Dutta, APP for
State.

Mr. Jagjit Singh & Mr.
Narayan Dev Parashar, Advs.
for R-2 & 3

+ CRL.M.C. 4787/2016 & CRL.M.A 19910/2016

RAJENDRA PRASAD PANDEYA & ANR Petitioners

Through: Mr. Jagjit Singh & Mr.
Narayan Dev Parashar,
Advocates

versus

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

Through: Mr. Ashish Dutta, APP for
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. Both these petitions relate to the criminal case (no.97051/2016) presently pending trial in the court of the Metropolitan Magistrate on the basis of a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted upon conclusion of investigation into the first information report (FIR) no.84/2010 of police station Chitranjan Park. The FIR was registered on 21.04.2010 in the wake of inquiry into the complaint that had been lodged on 19.11.2009 by the second petitioner (Kuber Boddh) in the first captioned petition, he being the brother of the first petitioner (Kuhu Pandeya) in the said matter. It was taken up for investigation into offences punishable under Sections 498A, 406, 34 of Indian Penal Code, 1860 (IPC) allegedly committed by the second to eighth respondents in the first captioned petition.

2. The report under Section 173 Cr.PC (charge-sheet) was submitted on 27/28.06.2011 against all the private party respondents in the first captioned petition proposing their trial for offence under Section 498A of the IPC observing that no evidence for offences under Section 406 of the IPC had come on record. The Metropolitan Magistrate, by order dated 30.06.2011, took cognizance on the said charge-sheet, presumably accepting the report that prosecution was to be initiated only for the offences under Section 498A IPC and issued process though restricting it to the petitioners in the second captioned petition, they being the father-in-law and mother-in-law respectively of Kuhu Pandeya.

3. The first captioned petition invokes the inherent jurisdiction of this court under Section 482 Cr. PC to bring a challenge to the abovesaid order dated 30.06.2011 praying for prosecution of all the private party respondents for the offences under Sections 498A, 406, 34 of the IPC respecting which allegations had been made in the FIR and evidence in support collected during investigation thereinto.
4. After securing the presence of the persons summoned as accused, the Metropolitan Magistrate considered the question of charge. By order dated 18.02.2015, however, she found no sufficient evidence having been brought out for putting Rajendra Prasad Pandeya (father in law) and Maya Devi Pandeya (mother-in-law) – first and second petitioner respectively in the second captioned petition – and consequently directing they to be discharged.
5. The State challenged the abovesaid order in the court of the Sessions invoking its revisional jurisdiction by petition (Crl. Revision Petition 125/2016). The court of Sessions, by its order dated 09.08.2016, set aside the order of discharge and directed instead the said two persons to be put on trial on the charge for offence under Section 498A read with Section 34 IPC.
6. The second captioned petition invokes the inherent jurisdiction of this court under Section 482 Cr. PC to assail the aforesaid order of the revisional court.

7. Since both the petitions arise out of the same case and have common background facts, they have been heard together and are being decided by this common order.

8. Kuhu Pandeya (*de-facto* complainant) was married to Samrat Pandeya, son of Rajendra Prasad Pandeya and Maya Devi Pandeya. Her parental family hails from District Datia in Madhya Pradesh, the marriage concededly having been solemnized on 21.11.2007 in Delhi, the matrimonial home also being in Delhi. Samrat Pandeya died on 20.08.2009 after a brief illness. There is material available on record to show that he died as a result of swine flu.

9. On 19.11.2009 i.e. within three months of the death of Samrat Pandeya, Kuber Boddh (first informant), the elder brother of the complainant lodged a complaint with police station Chitranjan Park alleging that the complainant was being subjected to harassment for dowry, the acts of commission and omission allegedly committed by her parents-in-law, sisters-in-law and their respective husbands also constituting the offence of criminal breach of trust. It was alleged that the complainant was being deprived of food, sleep and comforts and she was being pressurized to relinquish her rights to the properties of her late husband and also being subjected to mental and physical cruelty by being accused of having brought about the pre-mature death of Samrat Pandeya.

10. There is material on record to show that, on 20.11.2009, with the assistance of police, the complainant was rescued from the house of the accused persons at 86-B, Masjid Moth, DDA flats, phase-2,

New Delhi. There is also material on record showing that at the time of leaving the matrimonial home, with the assistance of police, Kuhu Pandeya had carried along only her used clothes and a few belongings, the list of such articles having been documented and statedly endorsed even by accused Maya Devi Pandeya (mother-in-law).

11. The preliminary inquiry by Crime Against Women Cell (CAW Cell) into the complaint dated 19.11.2009 remained pending till 21.04.2010 when the FIR was registered on its basis. During the course of the said inquiry, Rajendra Prasad Pandeya (father-in-law) had filed a complaint with police station Chitranjan Park of the complainant (Kuhu Pandeya) having caused the death of Samrat Pandeya in conspiracy with her family members. The fact of filing of the said complaint was logged by daily diary entry no.41B. It was, however, never followed up with any seriousness as no further action thereupon seems to have been taken.

12. The CAW Cell concluded the preliminary inquiry noting, *inter alia*, that proof had been adduced as to the procurement of the *stridhan* articles which had been given in or around the time of marriage by the parental family of Kuhu Pandeya. It also noted that the matrimonial family had “*not returned*” the said *stridhan* articles to Kuhu Pandeya who had been rescued from the matrimonial home with the help of local police. These facts were also specifically mentioned by the Assistant Commissioner of Police (ACP) of CAW Cell while recommending registration of the FIR on 23.03.2010. As

noted above, the report under Section 173 Cr.PC (charge-sheet), in contrast, was submitted on 27.06.2011, *inter alia*, with the conclusion that no direct evidence of entrustment of jewellery or commission of offence under Section 406 IPC had come up during investigation.

13. The complainant and the first informant are aggrieved on account of the investigating agency having dropped the case for prosecution under Sections 406 / 34 IPC. They are also aggrieved because the Metropolitan Magistrate while taking cognizance, by order dated 30.06.2011, issued process only against Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law), expressing no opinion qua the other relatives of the deceased Samrat Pandeya, they being his three sisters named Aggya Pandeya, Rashim Sadana and Meghna Bhatt, the later two admittedly being married sisters, their husbands having been named as Amit Sadana and Pradeep Bhatt, all of them having been shown as fourth to eighth respondents in the first captioned petition.

14. The revisional court, by its order dated 09.08.2016, which is assailed in the second captioned petition, has found material available to put Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law) on trial for the offence under Section 498A read with Section 34 IPC. While they question the framing of charge against them on the available material, the grievance of the petitioner in the first captioned petition also concerns the dropping of the criminal action for the offence under Section 406, 34 IPC.

15. In *Sajjan Kumar Vs. CBI*, (2010) 9 SCC 368, the Supreme Court summarized the principles which are to be kept in mind by the criminal court at the stage of consideration of a case for framing of charge under Sections 227 and 228 of Cr. PC. The court ruled thus :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for

conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(emphasis supplied)

16. The counsel representing the complainant and the first informant while arguing that a case was made out for three sisters of Samrat Pandeya including two married ones and their respective husbands also to be summoned as an accused referred to the allegations – in his submissions “specific allegations” – made

against them in the complaint dated 19.11.2009. The allegations which were pointed out by him generally relate to demands made by Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law) and the taunts connected thereto, this being followed by abuses and threats. He referred to the statements of both the petitioners, their father and one more witness (B.M. Sharma) as recorded by the police under Section 161 Cr. PC in corroboration.

17. On careful perusal of the aforesaid material on record, this court finds that though a case has been properly made out not only for summoning of Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandey (mother-in-law) but also for putting them on trial on the charge under Sections 498A / 34 IPC, the allegations against the three sisters and the husbands of two of them are general in nature, not necessarily connected with the cruelty meted out by the former two i.e. their parents. The two married sisters, even otherwise, were living away in their respective homes and there are no clear allegations as to on what occasion or on what date or time, they had joined the parents-in-law in exerting pressure on Kuhu Pandeya or her parental family to accede to the illicit demands. The sweeping allegations made to rope in almost all adult members of the family seem to be out of a sense of vendetta. Mere suspicion arising therefrom is not sufficient to put the three sisters and spouses of two of them on trial.

18. Without doubt, the Metropolitan Magistrate while taking cognizance on the charge-sheet on 30.06.2011 should have passed a speaking order as to why process was being issued under Section 204 Cr. PC only against Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law) and particularly as to why the request of the investigating agency for the three sisters and husbands of two of them to be also prosecuted was not being accepted. But then, given the above scrutiny of the material and the conclusions reached thereupon, there is no case for interfering with the order dated 30.06.2011 omitting prosecution of other accused.

19. The above observations also take care of the grievances set out in the second captioned petition vis-à-vis the order of the revisional court in framing charge for offences under Sections 498A / 34 of the IPC against Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law). Consequently, the said petition is liable to be dismissed.

20. But the question remains, as arises from the first captioned petition, as to whether the material submitted with the charge-sheet on 27/28.06.2011 made out a case for prosecution to be also launched for offences under Section 406 / 34 IPC. Upon scrutiny of the said material on record, in the considered opinion of this court, both the investigating agency and the court of Magistrate seem to have failed to take a proper view in this regard. There is ample evidence available to show that the dowry given in the marriage of Kuhu Pandeya was quite lavish. It included not only valuable

articles given at the time of ‘*God Bharai*’ and ‘*engagement*’ but also at the time of marriage ceremony. It included not only a number of jewellery articles but also cash, gold coins, silver coins and other expensive gifts for the bride and bridegroom, this, in addition to, gifts for their near relatives. The gifts meant for the bride were indeed part of her *stridhan*.

21. As noted earlier, Samrat Pandeya died on 20.08.2009. The allegations of cruelty meted out to Kuhu Pandeya relates to the period within three months post the death of Samrat Pandeya. As noted earlier, at the instance of her brother Kuber Boddh, she was “*rescued*” from the matrimonial home on 20.11.2009. As also noted earlier, the exit from the matrimonial home on 20.11.2009, with the assistance of police, was duly documented, it *prima facie* showing that she had not carried along any of her *stridhan* articles. Assumably, the *stridhan* would have been left behind by Kuhu Pandeya in the matrimonial home at the time of leaving with the police on 20.11.2009. Given the chronology of events the parents-in-law would have the custody and control over such *stridhan* articles. This is why during the preliminary inquiry, efforts were made to have the *stridhan* articles restored to her. The report of CAW Cell would unmistakably show that in spite of being called upon to do so, Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law) would not return the *stridhan*. In these circumstances, report dated 23.03.2010 of ACP of the CAW Cell itself sufficiently adds to the circumstances to make out a case

that the *stridhan* articles were not returned inspite of demand. On the basis of the above facts, on basis of grave suspicion, a *pima facie* case for charge under Section 406 read with Section 34 of the IPC was also made out against Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law).

22. For the foregoing reasons, the impugned orders dated 30.06.2011 and 18.02.2015 of the Metropolitan Magistrate and dated 09.08.2016 of the revisional court need suitable amends. A case for putting Rajendra Prasad Pandeya (father-in-law) and Maya Devi Pandeya (mother-in-law) on trial on the additional charge for offence under Section 406 / 34 IPC having been made out, the Metropolitan Magistrate is directed to frame the said additional charge before proceeding further with the trial. Needless to add, after framing of the additional charge, such of the witnesses for prosecution as may have been earlier examined will have to be recalled and examined further, if required, followed by renewed opportunity for cross-examination to be given to the said two accused persons.

23. The second captioned petition is dismissed. The first captioned petition is allowed in above terms.

(R.K. GAUBA)
JUDGE

AUGUST 24, 2018

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