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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th October, 2018

Decided on : 26th October, 2018

+ CRL.M.C. 1223/2015 and Crl. M.A. 4484/2015

TRIPAT CHAUDHARY Petitioner

Through: Mr. Shri Singh & Ms. Schuchi
Dwivedi, Advs.

versus

ARUNDHATI SAPRU MEHRA & ANR. Respondents

Through: Respondent in person

Mr. Mukesh Kumar, APP for the State

+ CRL.M.C. 947/2016 and Crl. M.A. 4009/2016 and 4529/2018

YASH MEHRA Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Ashish Aggarwal, Adv. with
petitioner in person.

versus

THE STATE AND ANR Respondents

Through: Mr. Mukesh Kumar, APP for the
State

R-2 in person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Arundhati Sapru Mehra, first respondent in Crl. M.C. 1223/2015 and the second respondent in Crl. M.C. 947/2016 was married to Yash Mehra (petitioner in Crl. M.C. 947/2016) on 12.07.2001. She (hereinafter, referred to as “the complainant”) had lodged a criminal complaint case (CC no.19496/2008 – new no.6/2/15) on 17.03.2008 in the court of the Additional Chief Metropolitan Magistrate, New Delhi alleging offences punishable under Sections 315, 328, 329, 406, 420, 498A, 506 read with Section 120 B and 34 of Indian Penal Code, 1860 (IPC) impleading Yash Mehra (hereinafter referred to as “the first accused”), Ashok Khurana (“second accused”), Dr. Tripat Chaudhary, petitioner in Crl. M.C. 1223/2015 (“third accused”) and Dr. Raj Kumar Saxena (“fourth accused”). On the said criminal case, the Metropolitan Magistrate held preliminary inquiry in the course of which the complainant examined herself (as CW-1), also examining D.R. Tiwari, Medical Record Officer of Kailash Hospital, Noida (CW-2) and B.K. Pandey, Sr. Executive Medical Records, Sitaram Bharatiya Institute of Science and Research (also CW-2). The Magistrate, by order dated 03.11.2014, declined to issue any process against the second accused. She, however, found sufficient grounds to proceed against the first accused (petitioner Yash Mehra) for offences under Sections 498A, 315, 328, 420, 406, 506, 120B IPC. She also found sufficient grounds to proceed against the third accused (petitioner Dr. Tripat Chaudhary) for offences under Sections 315, 120B IPC. It may be added that

summoning order was also issued against the fourth accused for offences under Sections 506 and 120B IPC.

2. The first and third accused, as aforesaid, feeling aggrieved by the aforementioned order, have come up to this court by the petitions at hand invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC to seek the said order issuing process against them to be quashed and vacated.

3. The complainant had initially appeared in these proceedings with a counsel representing her. On 19.07.2018, she informed the court that she did not want the services of any counsel. All sides have been heard at length and the record has been perused.

4. From the averments in the complaint and the documents which have been filed therewith or the material submitted with the petitions at hand, there seems to be no dispute as to the fact that the complainant was married to the first accused (Yash Mehra) on 12.07.2001. While the complainant had a failed previous marriage, it having been dissolved by a decree of divorce, Yash Mehra was a widower at the time of his marriage with the complainant. It appears that on account of their cohabitation, the complainant had become pregnant, she having developed some urinary track infection (UTI) in July / August 2001. She was taken for medical treatment, she eventually coming up for such purposes before the third accused (Dr. Tripat Chaudhary) who was consultant in Sita Ram Institute of Science and Research in Mehrauli Institutional Area, New Delhi, by the end of July 2001. There is material to show that some

complications arose on or about 28.07.2001 for which she had consulted the third accused. On 15.09.2001, she was again examined by the third accused in the aforementioned hospital. There is material to show that on 17.10.2001, she was subjected to ultrasound examination by the person mentioned as second accused (not summoned) who found that there was no heart beat in the foetus. The report was seen by the third accused and on the basis of her medical examination, the complainant underwent a procedure described as Dilatation and Evacuation (D &E) on 18.10.2001 at the said hospital. The complainant herself has proved the discharge document (Ex. CW1/E) dated 19.10.2001 pertaining to the said procedure. The material would show that the pregnancy was of the duration of eight weeks plus six days. The ultrasound examination had revealed the “*gestational sac in the fundus with a pulseless embryo*”, it being described as “*missed abortion*”.

5. The allegations of the complainant relevant to the accusations for laying the charge for offences under Sections 315 and 328 IPC, may be extracted from the complaint as under :-

“4. That in July 2001 the complainant went to Dr. Prabha Manchanda at Defence Colony clinic for UTI (Urinary Track Infection). By mid August, 2001 the complainant became pregnant, however, she did not know it then. The complainant was coerced to change her doctor from Prabha Manchanda to Tripat Choudhary by the accused No.1. The OB/Gyn Dr. Tripat Choudhary, whom the complainant started seeing from 28.07.2001, accused No.3 told the

complainant that she imagined muscular trembling, blurred vision, uncontrollable paralysis like lethargy, unexplainable anxiety / fear symptoms depression etc. and she must control them herself. The symptoms continued to bewilder the complainant.

6. That on 15th September, 2001 the complainant saw Dr. Tripat at Sitaram Bhartia as the UTI was not cured. She told the complainant that she was 4 weeks pregnant, she said that the complainant could be given injections twice-daily by her male nurse, like a diabetic. The accused No.1's first wife died from complications from diabetes at 31 years. The complainant balked at the suggestion and refused so she said she would try Cefturn, etc., which cured it. During this time, the complainant got high fever, acute stomach pain and Urinary burning constantly, which had not been as acute as in previous Months.

7. That on October 17, 2001 the complainant was taken for her first ultrasound to Dr. Ashok Khurana, accused no.2 who informed her that he could not hear the heartbeat of the foetus and that it was a miscarriage and he would tell Dr. Tripat Choudhary, accused No.3 to perform a Dilatation and Evacuation immediately. Dr. Tripat Choudhary, accused No.3 called it a "missed abortion", another term for a miscarriage, and ordered a D & E (Dilatation & Evacuation) the next day, October 18th, 2001, as Sitaram Bhartia Hospital in Delhi. The complainant did not get her periods for 3 months after that and the physical symptoms continued.

8. That on January 5th 2002 the complainant took her jewellery out of the locker to keep at home, this was the last time she used the locker

during the marriage, as accused wanted her to keep all that at home, as befitting his businessman's status among his colleagues and friends. In January itself the complainant also called Accused no.3, Dr. Tripat and told her that she had not got her periods and when could she start a family. She showed her surprise that the complainant had not started both. Immediately after, surprisingly immediately thereafter the complainant got her periods as normal cycle, again. However, accused continued to delay in starting the family.

9. That on May 15th, 2002 accused No.1 told the complainant that he was going to adopt a girl child and that the complainant had no say in it. The complainant was distressed and said she wanted her own child and the accused No.1 could not make a unilateral decision in the adoption. Accused No.1 said he would divorce her if she would not also adopt the child. The complainant was acutely distressed that accused No.1 continued to deny her a child and as threatening her with divorce.

13. That on July 4th, 2002 accused NO.1 forced the complainant to leave early morning to visit her sister who had arrived from Hong Kong on July 3rd night. He told her to stay with her for two days at her parent's home in Gurgaon. The complainant left with two sets of clothes. She had left without any jewellery on her, leaving behind a box full of her jewellery in her cupboard at D-272, Defence Colony, New Delhi. When the complainant called accused No.1 on July 6th to send her the car to come home, he told her to stay another two days and use the same clothes. He arrived at her parent's home on July 8 and told her he wanted a divorce. He also told

the complainant that he was too angry with her and changed his mind about having a child while she was pregnant and had wanted to get out of the marriage so he had actually told the doctors, Dr. Ashok Khurana and Tripat Choudhary to tell the complainant that if had been a miscarriage, while they had really done an abortion on the complainant on October 18th, 2001 further enabled by the mega, dosing with drugs.

39. That when the complainant was pregnant the accused No.1 with the conspiracy of accused No.2 and accused No.3 caused the miscarriage / abortion of the complainant with the intention of preventing the child from being born alive. Until after the eviction from the marital home in July 2002, the complainant had no suspicion that the miscarriage was an abortion. Only when the accused No.1 wrote about the "abortion" per se in his 12.09.2003 petition in Tis Hazari, the complainant had confirmed. They have thus caused offence punishable under section 120B read with 315 of the Indian Penal Code."

6. It is the argument of both the petitioners that the mere *ipse dixit* of the complainant that it was a case of forced abortion cannot be accepted against the medical record that has been presented by the complainant herself. The counsel submitted that there is no material from which it could be deducted even *prima facie* that the foetus which the complainant was carrying on 17/18.10.2001 was alive or that there was any act of commission or omission indulged in by any person including the petitioners to bring an end to the said pregnancy. It is pointed out that contrary to the claim of the complainant, the ultrasound report clearly reveals that the embryo had no pulse which is

the reason why the urgent medical procedure known as D&E had to be performed in the best interest of the woman (the complainant). It is submitted that since it was a foetus which was less than twelve weeks old, it not having survived, its continuation within the body of the complainant being obviously a matter of risk to her life, the medical termination of such pregnancy was even otherwise protected by Section 3 of the Medical Termination of Pregnancy Act, 1971. It was further submitted that Section 3 of the said law opens with a non-obstante clause and, therefore, excludes the application of offence under Section 315 of IPC to be invoked in such fact-situation.

7. Section 315 IPC reads thus :-

315. Act done with intent to prevent child being born alive or to cause it to die after birth :

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

8. It is clear that in order to attract the offence under Section 315 IPC, the embryo must have the possibility of resulting in a child being born alive. It is inherent in this that a lifeless foetus cannot be covered by the said penal clause.

9. Section 3 of the Medical Termination of Pregnancy Act, 1971 to the extent relevant here reads thus :-

“3. When pregnancies may be terminated by registered medical practitioners – (1). Notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2). Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner –

(a). Where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b). where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that –

(i). the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health.

x x x

(3). In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant women's actual or reasonable foreseeable environment.”

10. This court finds merit in the submissions of the petitioners. The oral word of the complainant, cannot be accepted against the

contemporariness medical record, that too after a gap of seven years, without any medical opinion to the contrary being presented. There can be no denial of the fact that the embryo carried by her on 18.10.2001 was lifeless. It had to be evacuated by the medical procedure which was carried out by the third respondent in her own best interest. Its continuation within her body would have led to grave risk to her physical well-being. The procedure undergone with appropriate formalities like consent of the husband who was accompanying having been taken and apparently with her own tacit consent cannot be brought in question in this manner. Consequently, the summoning order of both the petitioners on the accusations for offences under Section 315 read with Section 120 B IPC cannot be upheld. The same is bound to be set aside. Ordered accordingly.

11. This court also finds substance in the submission of the first accused (Yash Mehra) respecting the allegations qua the offences under Section 328 IPC. The said penal clause reads thus :-

“328. Causing hurt by means of poison, etc. with intent to commit an offence

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term

which may extend to ten years, and shall also be liable to fine.”

12. There is no medical evidence brought on record to show any substance in the nature of poison or stupefying, intoxicating or unwholesome drug having been administered to the complainant. Her mere oral word cannot suffice. She has referred to she having been made to use medicines like placidox (diazepam) by the first accused at the instance of the fourth accused. There is no prescription produced in this regard. There is nothing indicated as to the medical condition in which such medicinal prescription may have been recommended, assuming that there was some such recommendation. In these circumstances, there is no reliable or cogent evidence brought to the court to support the complaint about such offence. [see *Joseph Korian Philip Jose vs. State of Kerala*, (1994) 6 SCC 535].

13. Thus, the summoning order against the first accused (Yash Mehra) to the extent thereby he has been called upon to appear and face proceedings for the offences under Section 328 IPC also must be set aside. Ordered accordingly.

14. There are allegations set out in the criminal complaint against the first respondent which *prima facie* make out a case for offences under Sections 498A, 420, 406, 506, 120B IPC. The argument of the said petitioner is that the allegations are highly belated, false, concocted and motivated. It was pointed out that as per the complaint, the allegations pertain to the period ending sometime with September 2003. It is submitted that since the complaint was filed on 17.03.2008,

the same is not only an after-thought, crafted under some legal advice, but also time barred vis-à-vis the offences under Section 498A, 406 and 506 IPC, if seen from the perspective of Section 468 Cr. PC.

15. There is no doubt that offences punishable under Sections 406 and 498A IPC carry the maximum punishment of imprisonment for three years with or without fine. Similarly, offence under Section 506 (Part-I) carries maximum punishment of imprisonment for two years with or without fine. Ordinarily, the period of limitation for cognizance of such offences to be taken in terms of Section 468(2) Cr. PC is three years. But then, it has to be seen as to when the offences are alleged to have been actually committed. Having regard to the narration of facts by the complainant in her criminal complaint and also in the pre-summoning evidence, all these offences are closely connected to each other, the events, as brought out by the first accused through the material submitted by himself, having continued beyond September 2003. This would need some elaboration.

16. It was pointed out by the counsel for the first accused (Yash Mehra) himself that the parties at one stage had agreed to resolve the dispute amicably. They had jointly approached the matrimonial court (presided over by Additional District Judge) by petitions for divorce by mutual consent under Section 13-B of Hindu Marriage Act, 1956. The petition for the first motion (HMA 604/02) came up before the matrimonial court on 20.09.2002. On that date, joint statement of both the first accused and the complainant were recorded, the same indeed including a declaration that all claims and disputes regarding “dowry

articles, streedhan, maintenance, past, present and future and also for permanent alimony” had been “*settled*” and further that “*no claim / dispute*” was left to be resolved. It was allowed, by order dated 20.09.2002, leaving the parties to approach the court again by the second motion petition. It has also been brought out that the parties again approached the matrimonial court by second motion petition (HMA 383/2003) on which their joint statements, similar to the above-mentioned statements at the first motion stage, were recorded on 21.04.2003. Admittedly, the complainant was signatory not only to the two joint petitions but also to the joint statements recorded by the matrimonial court on both occasions.

17. The matrimonial court, however, did not pass a decree of divorce by mutual consent on 21.04.2003 when the joint statement as above was recorded. The complainant, sometime in May 2003, moved an application seeking to recall and withdraw her consent. Noticeably, the reasons set out by her at that stage were that the first accused (Yash Mehra) had agreed to pay to her an amount of Rs.70,00,000/- towards permanent alimony and had also undertaken to return her *streedhan* articles, he having failed to keep the said promise in such regard. She also alleged that she had been subjected to threats that if she were not to sign the petition for mutual consent divorce, the husband would take steps to have her declared to be a person of unsound mind. The matrimonial court, by order dated 22.12.2004, permitted the complainant to withdraw her consent and, thus, declined

to grant a decree of divorce by mutual consent and consequently closed the proceedings.

18. It is admitted case of the petitioner (Yash Mehra) that the above-said order was challenged by him in this court. But, his application [CM(M) 2631/2005] was eventually dismissed by order dated 02.02.2009.

19. It is the submission of the petitioner Yash Mehra that the statements on oath of the complainant before the matrimonial court affirming that all her claims including towards *streedhan* articles had been amicably resolved and settled bind her and, therefore, she cannot be permitted to bring a charge under Section 406 IPC, that too belatedly.

20. In the considered view of this court, the accusations of the complainant on the above score cannot be trashed with reference to such statements before the matrimonial court for the reason her prayer for divorce by mutual consent was permitted to be withdrawn, her grievance having been duly noted, that her *streedhan* articles had not been returned even though the husband (first accused) had agreed and undertaken to do so. The narration of the above facts also brings out that the issue of return of the *streedhan* articles had *prima facie* remained unresolved till the petition of the first accused – CM (M) 2631/2005 – was disposed of by this court on 02.02.2009.

21. From the above noted sequence of events, it is clear that the allegations of the complainant about the husband (first accused) not

having discharged the trust vis-à-vis the *streedhan* articles cannot be treated as time barred.

22. The petitioner (Yash Mehra) relies on *Nitya Dharmananda alias K. Lenin and Anr. vs. Gopal Sheelum Reddy*, (2018) 2 SCC 93; *Madhavrao Jiwarelkar Scindia and Ors. vs. Sambhajirao Chandojirao Angre and Ors.*, (1988) CrLJ 853; *State of Karnataka vs. L. Muniswamy and Ors.*, (1977) 3 SCR 113; *Dr. Jacob George vs. State of Kerala*, (1994) 3 SCC 430; and *Rajiv Thapar and Ors. vs. Madan Lal Kapoor*, (2013) 3 SCC 330 to urge that this court quash the proceedings in the criminal case in entirety because the allegations of the complainant are false and motivated.

23. The submission of the said petitioner, at their best, give rise to questions of facts which cannot be properly or effectively addressed or adjudicated upon in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar* (supra) need to be borne in mind :-

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences

inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

(emphasis supplied)

24. There are no special reasons shown as to why there should be a departure from the normal rule that factual inquiry must be held before the concerned criminal court.

25. For the foregoing reasons, this court finds no good grounds to interfere in the proceedings against the petitioner (Yash Mehra) on charges other than for offences under Section 315 and 328 IPC. His petition to that extent must be dismissed.

26. In the result, Crl. MC 1223/2015 is allowed. The proceedings against the petitioner Tripat Chaudhary in the aforementioned criminal case instituted by Arundhati Sapru Mehra are hereby quashed. The other petition (Crl. M.C 947/16) of Yash Mehra is partly allowed. The summoning order passed against him by the Metropolitan Magistrate on the accusations for offences under Sections 315 and 328 IPC shall stand set aside. The proceedings for other offences indicated in the summoning order shall continue against him in accordance with law.

27. Both the petitions and the applications filed therewith are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 26, 2018

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