

\$~1 & 2 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th December, 2018

+ CRL.M.C. 4578/2015 and Crl. M.A. 16340/2015

PRAVEEN MITTAL & ANR Petitioners

Through: Mr. Vipin Nandwani, Advocate

versus

THE STATE OF NCT OF DELHI & ANR Respondents

Through: Mr. Amit Ahlawat, APP for the State
with SI Anuj Kumar, PS Anand Vihar.
Mr. Rajat Wadhwa, Adv. with
Mr. Ashish Batra, Adv. for R-2.

+ CRL.M.C. 3182/2016 and Crl. M.A. 13609/2016

DIVYA MITTAL Petitioner

Through: Mr. Rajat Wadhwa, Adv. with
Mr. Ashish Batra, Advocate

versus

STATE & ORS. Respondents

Through: Mr. Amit Ahlawat, APP for the State
with SI Anuj Kumar, PS Anand Vihar.
Mr. Vipin Nandwani, Advocate for
R-2, 3 & 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Both these petitions arise out of the same criminal case, giving rise to similar questions about same set of orders, involving the same

set of parties and, therefore, have been heard together and are being decided by this common order.

2. Petitioner Divya Mittal of the second captioned matter was married to Ankur Mittal (second respondent in CrI.M.C.3182/2016), he being son of the petitioners in the first captioned petition, they also being respondents (third and fourth) in the second captioned petition. The marriage of the said parties was solemnized on 28.11.2004 as per Hindu rites and ceremonies. A female child took birth out of the said wedlock on 20.04.2007. On 17.08.2011, Divya Mittal (the complainant) lodged a complaint with Crime Against Women (CAW) Cell of District East Delhi, following it up with another complaint submitted on 30.08.2011. The inquiry into the said complaints by CAW Cell eventually resulted in first information report (FIR) No.66/2012 being registered by Police Station Anand Vihar on 14.03.2012 involving offences punishable under Section 498-A/406/34 of Indian Penal Code, 1860 (IPC).

3. It appears some efforts were made during the course of inquiry, and investigation, for conciliation but the same did not bear fruit. Eventually, report (charge sheet) of investigation under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted by the police on 03.07.2013, on which court of metropolitan magistrate took cognizance and summoned all the three said persons, *i.e.*, Ankur Mittal (husband), Praveen Mittal (mother-in-law) and Vineet Mittal (father-in-law) as accused for offences punishable under Sections 498-A/406/34 IPC. The metropolitan magistrate thereafter considered the

question of charge. By her order dated 22.09.2014, she found that there was no material on the basis of which any of the three accused could be put to trial on the charge for offence under Sections 498-A/34 IPC. She, however, found charge made out and directed the same to be framed under Section 406 IPC read with Section 34 IPC against the three accused.

4. The said order on the question of charge was challenged by the accused persons in the court of sessions by Criminal Revision No.28/2014. The revision petition was partly allowed, it having been concluded by the sessions court that there was no case made out for putting the husband on trial, there being no allegations of entrustment of *stridhan*/jewellery articles to him. The order of the metropolitan magistrate framing charge against the mother-in-law and father-in-law, however, was upheld.

5. Feeling aggrieved by the aforesaid order of the revisional court, the mother-in-law and father-in-law have approached this court by CrI.M.C. 4578/2015 invoking the inherent power of this court under Section 482 Cr.P.C. seeking discharge in the case.

6. On the other hand, the complainant has also approached this court by CrI.M.C.3182/2016 questioning the decision of the metropolitan magistrate refusing to frame charge against the three accused persons for offence punishable under Sections 498-A read with Section 34 IPC.

7. It may be mentioned here that the complainant had challenged the order of the revisional court discharging Ankur Mittal (the

husband) for offence under Section 406 IPC by CrI.M.C. 3181/2016. The said petition, however, was dismissed by a learned Single Judge of this court by order dated 02.09.2016. In this view, the order discharging Ankur Mittal (the husband) for offence punishable under Section 406 IPC has attained finality and cannot be re-opened. Thus, the second captioned petition is pressed only *qua* allegations under Section 498-A read with Section 34 IPC.

8. The law on the question of consideration of the criminal case for charge is well settled. The principles governing the said subject were summarized by the Supreme Court in *Sajjan Kumar vs. CBI, (2010) 9 SCC 368* as under :-

“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.”

9. Having gone through the complaint dated 17.08.2011 and 30.08.2011, which were submitted by the complainant with CAW Cell and which were eventually translated into the FIR, this court is of the view that both the court of metropolitan magistrate as also the court of

revision have fallen into error in not construing the case properly, restricting their consideration, improperly so, from the narrow lens of explanation (b) appended to Section 498-A IPC by directing discharge of the three accused persons for the reason that there is nothing to show the cruelty to be connected to the illicit demands or expectations for dowry or valuable gifts to be handed over. The expression “*cruelty*” which is at the core of the offence under Section 498-A IPC requires scrutiny of the material also from the perspective of explanation (a), it reading thus:-

“(a) 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;”

10. In *Savitri Devi vs. Ramesh Chand & Ors.*, 104 (2003) *Delhi Law Times* 824, a learned Single Judge of this Court, after examining relevant case law on the subject including the decision of Supreme Court in *V. Bhagat vs. Mrs. D. Bhagat*, AIR 1994 SC 710; and *S. Hanumantha Rao vs. S. Ramani*, 1999 (3) SCC 620, construed the provision thus:-

“16. For the purpose of Section 498A IPC which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives-near or distant, living together or separately. Ingredients of 'cruelty' as contemplated under Section 498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage i.e. Divorce. In constituting 'cruelty' contemplated by Section 498A IPC the acts or

conduct should be either such that may cause danger to life, limb or health or cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "willful" i.e. intentional. So to invoke provisions of Section 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health. Further conduct that is likely to drive the woman to commit suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with marital life."

11. It is incorrect on the part of the accused persons to argue that unless there is material to prove illegal demands for dowry, a case for cruelty to the married woman under Section 498-A IPC cannot be made out. Reliance in this context on *Neelu Chopra & Anr. vs. Bharti*, 2009 (4) JCC 3021; *Raj Kumar Khanna vs. State (NCT of Delhi) & Ors.*, 95 (2002) DLT 147; and *Sanjeev Kumar Aggarwal & Ors. vs. State & Anr.*, 2007 (4) JCC 3074, is not correct.

12. The complainant has set out at length in the complaint the conduct of the three accused persons towards her and her infant daughter. The parents-in-law had taken away her jewellery immediately after her arrival in the matrimonial home. They would not allow her its use, retaining most of the precious items forming part

of her *stridhan*. She would be made to sleep outside. The husband would consistently and unreasonably harass her, keeping her in deprivation. She would be subjected to physical assaults, abuses and taunts, there being clear allegations that the matrimonial family was not happy with the dowry given in the marriage. The conduct of the husband, statedly at the instance of his parents, was so cruel that he even subjected the infant daughter to physical assaults, disrobing the complainant, misbehaving with her under the influence of alcohol. When the complainant was constrained to leave the matrimonial home, her *stridhan* articles, etc. were not handed over to her inspite of specific demands, the husband also having refused to do so upon being approached. During conciliation proceedings, endeavour to evade the possibility of handing over the articles was made, some recoveries eventually having been made during house search carried out on 03.05.2012 and 06.07.2012.

13. The conduct towards the complainant would *prima facie* undoubtedly also constitute “*domestic violence*”. But, this does not mean these facts cannot constitute “cruelty” within the meaning of penal clause under Section 498-A IPC. Even if innuendos of the utterances attributed to accused persons showing desire for dowry of greater value being behind their aforementioned conduct were to be ignored, there is no escape from the *prima facie* conclusion that the conduct was such as was likely to endanger the mental health of the complainant if not actually causing injury of such nature. The trial Magistrate and the court of Sessions were clearly in error while directing, or upholding, discharge under Section 498-A IPC.

14. Charge *prima facie* is made out against all the three accused persons for they to be put to trial under Section 498-A IPC read with Section 34 IPC.

15. There is no error in the consistent orders of the metropolitan magistrate and the revisional court in putting the parents-in-law on trial on the charge for offence under Section 406 read with Section 34 IPC. It may be that initially the allegations were made only against mother-in-law. But, in the second complaint clear allegations about the involvement even of the father-in-law had been levelled. The same cannot be ignored. Reliance on *Onkar Nath Mishra & Ors. vs. State (NCT of Delhi) & Anr., 2008 (2) SCC 561*, by the petitioners in the first captioned matter is misplaced. There is sufficient material on record to show that the parents-in-law, acting through mother-in-law, had taken over the *stridhan* (jewellery) of the complainant soon after the marriage, most of which was not returned. The very fact that during the conciliation proceedings the accused persons took the position that they had nothing more to return, this being followed by seizure of some part of the remaining jewellery makes out a good case for charge under Section 406/34 IPC to be framed against them.

16. In view of the above, the first captioned petition, *i.e.* CrI.M.C.4578/2015 is dismissed. The second captioned petition, CrI.M.C.3182/2016 is allowed with directions that all the three respondents, viz Ankur Mittal, Praveen Mittal and Vineet Mittal shall face trial on the charge under Section 498-A/34 IPC, this being

additional charge in so far as Praveen Mittal and Vineet Mittal are concerned.

17. In the result, Ankur Mittal shall also be obliged to appear before the metropolitan magistrate for further proceedings in accordance with law in the aforementioned criminal case on 28th January, 2019. He shall furnish fresh bail bonds in terms of the bail order that would have been earlier passed in his case, for regulating his appearance in future. The concerned criminal court shall proceed in accordance with law thereafter.

18. Both the petitions and the applications filed therewith stand disposed of in above terms.

DECEMBER 19, 2018

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R.K.GAUBA, J.