

\$~5 & 6

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th August, 2018

+ CRL.M.C. 2288/2015 and Crl. M.A. 8642/2015

KIRTI SHARMA

..... Petitioner

Through: Mr. Aditya Jain and Ms. Aakriti
Dhawan, Advocates

versus

NCT OF DELHI & ORS

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

Ms. Meenakshi S. Devgan, Advocate for R-2

+ CRL.M.C. 4756/2015 and Crl. M.A. 17177/2015

G K SHARMA

..... Petitioner

Through: Mr. Aditya Jain and Ms. Aakriti
Dhawan, Advocates

versus

NCT OF DELHI & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

Ms. Meenakshi S. Devgan, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no.67/2013 was registered by police station Maya Puri on 13.03.2013 involving offences punishable

under Sections 498A, 406, 34 IPC on the complaint of the second respondent. The investigation into the said FIR was completed and a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC) dated 13.12.2013 was submitted in the court of the Metropolitan Magistrate wherein besides others, the petitioners herein were shown as the accused persons. These petitions were filed in May and November 2015 with the prayer that this court, in exercise of its inherent power and jurisdiction under Section 482 Cr. PC, quash the said FIR, the charge-sheet and the criminal proceedings arising therefrom against the petitioners.

2. The second respondent (complainant) was married to Varun Sharma, son of the petitioner in the second captioned petition on 16.02.2010 in New Delhi. The petitioner in the first captioned petition is the sister of the said Varun Sharma and, therefore, related to the complainant as a sister-in-law (*Nanad*). The allegations have been made in the FIR and the statements which were recorded during the course of investigation leading to the charge-sheet being presented about their complicity in the offence particularly under Section 498A IPC.

3. The first petitioner is described as a U.K. citizen, who has been settled in that country with her family since 2005. It is her case that the allegations made against her, particularly about transfer of a flat in the name of the second petitioner under duress exerted by her, are false and baseless, levelled out of *vendetta* and with a view to extract

money. She also refers to Section 188 read with Section 4 Cr. PC to raise the issue of territorial jurisdiction.

4. The petitioner in the second captioned petition, on the other hand, has pleaded that he was living separately from the complainant since 2011, the complaint having been filed after a delay of two and half years in 2013 on false and concocted version. He also submits that the complainant after marriage had moved to United States of America with her husband (son of the second petitioner) and, therefore, his complicity in the cruelty that is alleged to have been meted out by the husband is highly improbable.

5. The submissions made by the petitioner give rise to the questions of facts which cannot be addressed conclusively in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 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)

6. At the hearing, it was conceded that the charge-sheet which was presented in the court of the Metropolitan Magistrate has been at the

stage of consideration for framing of charge. There is no reason why the contentions including the issue of jurisdiction set out in these petitions cannot be presented for consideration to the trial court at the stage of consideration of the case for prosecution for framing of charge.

7. No case is made out for interference by this court under Section 482 Cr. PC.

8. In above view reserving the contentions of the petitioners to be agitated before the trial court at the time of consideration of charge, these petitions and the applications filed therewith are disposed of.

R.K.GAUBA, J.

AUGUST 16, 2018

y8