

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

% Decided on: 5th December, 2018

+ **W.P.(CRL) 2325/2017 and Crl. M.A. No.13146/2017 (stay)**

ANTHONY JOSE

..... Petitioner

Represented by: Ms. Bina Madhavan and Ms.
Akanksha Mehra, Advocate.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr. R.S. Kundu, Additional Standing
Counsel for State with Ms. Suman
Saharan and Mr. Bhagat Singh,
Advocates with ASI Aman Kumar,
PS CWC, Nanak Pura.
Mr. Jogy Scaria, Advocate for
respondent No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, petitioner prays as under:

- a) *quash and set aside the FIR No.98 dated 28.07.2017 registered with Crime (Women) Cell, Nanak Pura, District Special Unit for Women and Children, Delhi against the Petitioner for offence under Section 498A, 406 and 34 of the Indian Penal Code, 1860;*
- b) *quash and set aside the proceedings in CC No.7601 of 2017 under Section 12 of the Protection of Domestic Violence Act, 2005 pending before the Ld. Metropolitan Magistrate, Mahila Court-01, South-East District, Saket District Courts, New Delhi;*

c) *pass any other or further order which this Hon'ble Court deems fit and proper in facts and circumstances of the present case.*

2. The grounds urged for seeking quashing of FIR No. 98/2017 under Sections 498A/406/34 IPC registered at PS Crime (Women) Cell, Nanak Pura, Delhi are that the FIR was registered to wreak vengeance and that it was beyond the period of limitation as the parties separated from each other in the year 2014. Parties admittedly resided together till August, 2014 whereafter they parted company and in 2015 the respondent No. 2 filed a complaint before CAW Cell where a settlement was arrived at between the parties in the pre-litigation mediation on 7th April, 2016, however, the said settlement was not fully acted upon and the parties drifted away from the settlement, whereafter the complainant filed an application for revival of the earlier complaint which was not revived as had been closed, thus she filed a fresh complaint on 28th July, 2017.

3. Considering the facts noted above that within the period of limitation of taking cognizance the complainant filed the complaint however, since talks of settlement continued and arrived at but not fully acted upon and the earlier complaint was not revived, the respondent No.2 was constrained to file the second complaint, it cannot be said that the FIR in question is beyond the period of limitation and thus liable to be quashed on that count.

4. Section 468 Cr.P.C. reads as under:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3)¹ For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

5. In (1993) 3 SCC 4 Vanka Radhamanohari Vs. Vanka Venkata Reddy the Supreme Court dealing with the bar of Section 468 Cr.P.C.in relation to the matrimonial offences held as under:

“7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh [(1981) 3 SCC 34 : 1981 SCC (Cri) 625 : AIR 1981 SC 1054]. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the

house, which many of such victims do not like to be made public. As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether “it is necessary to do so in the interests of justice”. ”

6. In the decision reported as 2003 (68) DRJ 437 Asha Ahuja Vs. Rajesh Ahuja & Ors. this Court dealing with the accused being discharged on the ground of limitation under Section 468 Cr.P.C. read with Section 473 Cr.P.C. held that Section 473 Cr.P.C. enjoins a duty upon the Court to examine not only as to whether delay in filing of the FIR is explained or not but also whether it is the requirement of justice to condone or ignore the delay and in matrimonial cases if the bar of Section 468 Cr.P.C. is pleaded the Court is required to apply its mind on the question as to whether it is necessary to condone the delay in the interest of justice. In the said case this Court considered the following reasons in the complaint to condone the delay:

“6. A perusal of the complaint filed by the petitioner in the present case shows that soon after her marriage, the respondents had started taunting and harassing her for bringing insufficient dowry and warned her of serious consequences if more articles like refrigerator, washing machine, scooter etc. were not brought. She was humiliated, abused and tortured by them and was literally treated as a maid servant. She was given beatings also. She lost her health and in the meanwhile, became pregnant but before her delivery, she was forced to leave her matrimonial home. Her husband changed his religion even with a view to re-marry but thereafter, was made to re-convert and become a Hindu. The petitioner came back to her matrimonial home in March, 1987

but after a few weeks again, her harassment for bringing more dowry articles commenced. In August, 1991, she was again thrown out of her matrimonial home along with her children and thereafter, continuous efforts were made to persuade her husband and in-laws to take her back along with the children but the respondents kept on dilly-dallying. Her husband filed a suit for divorce as well as custody of children and thereafter alone the complainant-petitioner felt compelled to initiate present proceedings against her husband and family members. Considering the circumstances under which the complainant-petitioner had been put and her constant desire to go back to her matrimonial home, it was a fit case in which the Courts below ought to have condoned/ignored the delay in the filing of the complaint under Section 498-A IPC.”

7. Further, Supreme Court in (1999) 4 SCC 690 Arun Vyas Vs. Anita Vyas held that the essence of the offence in Section 498-A is cruelty as defined in the explanation appended to the said section and is a continuing offence and on each occasion on which the respondent was subjected to cruelty a new starting point of limitation arises. It was held:

“13. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on 13-10-1988 when, on the allegation made by the respondent in the complaint to the Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for the offences under Sections 406 and 498-A from 13-10-1988 and ended on 12-10-1991. But the charge-sheet was filed on 22-12-1995, therefore, it was clearly barred by limitation under Section 468(2)(c) CrPC.”

8. Further dealing with Section 406 IPC this court in 2010 SCC OnLine Del 4384 S.K.Bhalla & Ors. Vs. State of NCT of Delhi & Anr. held that Section 406 being a continuing offence as defined under Section 472 IPC the bar under Section 468 Cr.P.C. was not applicable. It was held that :

“14. No doubt Section 468 Cr.P.C. provides limitation of three years for taking cognizance of the offences which are punishable for the maximum imprisonment of three years. This provision, however is of no help to the petitioners for the reason that as per the allegations in the FIR, the petitioners have also committed an offence punishable under Section 406 IPC by misappropriating the ‘Stree-dhan’ of the complainant entrusted to them and not returning it to her despite of repeated demands. Section 472 Cr.P.C. is relevant in this case, which reads thus:

“472. Continuing offence.—In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues”

15. Perusal of the FIR would show that the complainant has made specific allegation that despite her demands, the petitioners have failed to return her ‘Stree-dhan’ and jewellery. She has not specified the date on which the demand was made. Section 406 of IPC deals with the offence of criminal misappropriation and the aforesaid offence is complete when the entrusted property is not returned by the persons who were entrusted with the property on demand by the rightful owner. Thus, though the FIR discloses the commission of offence under Section 406 IPC, it does not specify on which date the demand for return of ‘Stree-dhan’ was made as such it is not clear when the offence of criminal misappropriation was complete. This obviously is a subject matter of investigation and evidence pertaining to the same is to be seen in the charge sheet. Otherwise also, even if it is presumed that demand for return of ‘Stree-dhan’ was made in November, 1992, then also, till the ‘Stree-dhan’ of the

complainant is returned to her, the misappropriation by the petitioners continues. Thus, fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Therefore, prima facie, it cannot be said that the FIR pertaining to the offence punishable under Section 406 IPC is time barred. It is well settled that delay in filing of FIR by itself cannot be a ground for discharge or acquittal of the accused. There can be many reasons for delay in filing of the complaint. It would not be appropriate to speculate on this aspect. If the complainant/prosecution is able to explain the delay, then the court would be well within its rights to act on the evidence led during trial and that explanation, if any, can come only during trial. Thus, under the circumstances, I do not find any merit in the contention of learned counsel for the petitioners that the offence complained of in the FIR is barred by limitation in view of Section 468 Cr.P.C.”

9. The second prayer in the present petition relates to the quashing of CC No.7601 of 2017 under Section 12 of Protection of Women from Domestic Violence Act (in short ‘PWDV Act’).

10. As perusal of the prayers in the complaint under Section 12 of the PWDV Act relate primarily to grant of maintenance to respondent No.2 and the minor child. Non providing of maintenance is a continuous cause of action and even if for three years the respondent No.2 did not claim the maintenance for herself or for the child, the same would not debar her from seeking maintenance under Section 12 of the PWDV Act and the complaint thereon cannot be dismissed being barred by limitation.

11. Learned counsel for the petitioner submits that in terms of the settlement the petitioner has been paying a regular maintenance of ₹10,000/- per month however, that will be an issue which will be considered by the learned Trial Court while dealing with the petition for maintenance as to the amount which has already been paid and cannot be a ground for quashing of

the complaint under Section 12 of the PWDV Act.

12. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2018

‘vn’

