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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th October, 2018

+ CRL. M.C. 4588/2015

ANJANA RANI

..... Petitioner

Through: Mr. Rajeev Krishan Sharma,
Advocate with Ms. Garima
Kaushik, Advocate

versus

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

..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State with SI Prem Raj, PS
Vijay Vihar.
Mr. Kishan Nautiyal, Adv. for
R-2 with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The First Information Report (FIR) No.85/2012 was registered on 12.03.2012 by Police Station Vijay Vihar on the complaint of the petitioner, she leveling allegations against her husband, the second respondent, of he having committed certain acts of commission and omission constituting offences punishable under Sections 498-A/406/34 on Indian Penal Code, 1860 (IPC). On conclusion of the investigation report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted on which cognizance was taken by the Metropolitan Magistrate. By order dated 15.01.2015, the Metropolitan Magistrate found charge made out to put

the second respondent on trial for offences under Section 498-A/406 IPC. The second respondent challenged the said order in the court of Sessions by Criminal Revision Petition No.33/2015 which was decided by order dated 14.08.2015, the revisional court setting aside the order of the Magistrate and directing the second respondent to be discharged holding, *inter alia*, that no *prima facie* case has been made out against him.

2. Feeling aggrieved, the complainant has come up to this court invoking inherent power and jurisdiction of this court under Section 482 Cr.P.C. assailing the view taken by the revisional court. The petition is resisted by the second respondent while the first respondent (State) supports the grievance raised by the complainant (the petitioner).

3. The revisional court in the impugned order has taken note, *inter alia*, of the law governing the question of consideration of a criminal case for charge as explained in *Union of India vs. Prafulla Kumar Samal*, AIR 1979 SC 366. In later decision of the Supreme Court reported as *Sajjan Kumar vs. CBI*, (2010) 9 SCC 368, the principles governing the question of charge were explained 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.”

4. The parties herein were married to each other on 25.04.2008. The petitioner had reasons to approach the police earlier with similar grievances against the second respondent and at her instance on her complaint, FIR No.258/2009 was registered by Police Station Vijay Vihar. The second respondent, however, persuaded the petitioner to resume cohabitation, the parties deciding to bury the hatchet. On the basis of settlement then reached, a petition (Crl.M.C.1057/2010) having been filed in this court, the proceedings arising out of the said FIR No.258/2009 were quashed. It may be added here that the petitioner had also simultaneously approached the criminal court with a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005. In the wake of the amicable settlement, she was persuaded to withdraw the said petition as well.

5. The petitioner approached the police again on 12.03.2012 referring to the past conduct and history and stating, *inter alia*, that the second respondent had continued with his conduct whereby she was being subjected to cruelty by him, he also having continued to demand dowry, extending threats to her, he having physically assaulted her

several times, picking up quarrels and extending threats to kill her and take away the child of the parties forcibly from her.

6. Whilst the Metropolitan Magistrate found the evidence gathered in the wake of investigation into the fresh FIR to be sufficient, the revisional court has trashed the case of the petitioner primarily on the reasoning that the allegations made by her are “*not specific*”, they being “*vague*” . It has further been noted in the revisional court’s order that the *stridhan* articles of the petitioner had been seized during the investigation into earlier FIR No.258/2009 and had been handed over to her and the second respondent had also paid an amount of Rs.1.5 lacs to her “*in lieu of jewellery*” at that stage. This, in the opinion of the revisional court, renders it a case where the charge of criminal breach of trust could not be leveled.

7. Having heard both sides and having gone through the record, this court finds the reasons set out in the revisional court’s order declining the plea for charge under Section 406 IPC to be just and proper. Indeed, since the *stridhan* articles had been seized and restored to the custody and control of the petitioner (complainant) the second respondent even having paid money in lieu of the jewellery which was found deficient at that stage, there being no fresh case of any entrustment of *stridhan* articles or any property of the petitioner, there is no basis for the second respondent to be put in trial on the charge for the offence punishable under Section 406 IPC.

8. But, in the given facts and circumstances and having regard to the evidence that has been presented with the charge sheet submitted

pursuant to the second FIR, particularly the version of the petitioner, it cannot be said that no case is made out for the offence under Section 498-A IPC. It is not correct to trash her case on the ground that her allegations are vague or non specific. On the contrary, she has clearly stated the circumstances constituting acts of commission or omission which render it a case of cruelty within the meaning of the expression used in Section 498-A IPC.

9. In these circumstances, it was incorrect and improper on the part of the revisional court to have interfered with the view taken by the court of Metropolitan Magistrate.

10. For the foregoing reasons and in the circumstances, the petition is partly allowed. The order dated 26.03.2015 of the Metropolitan Magistrate to the extent thereby second respondent was directed to be put on trial on the charge under Section 498-A IPC stands restored and revived. The order of discharge for that offence passed by the revisional court shall stand vacated. The proceedings in the criminal case will continue accordingly.

11. The parties are directed to appear before the concerned criminal court on 4th December, 2018.

12. The petition stands disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 26, 2018/vk