

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

% Decided on: 15th January, 2019

+ **W.P.(CRL) 111/2019**

SMT. KANAK LATA SAXENA & ORS. Petitioner

Represented by: Samdarshi Sanjay, Advocate.

versus

STATE OF NCT OF DELHI & ORS Respondent

Represented by: Mr. Ashish Aggarwal, ASC with ASI
Sunita, PS CWC/Nanakpura.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. No. 757/2019 (Exemption)

Allowed, subject to all just exceptions.

W.P.(CRL) 111/2019 and Crl.M.A. No. 756/2019

1. By this petition, the petitioners seek quashing of FIR No. 179/2016 under Sections 498A/406/34 IPC investigated at PS Nanak Pura CAW Cell.
2. The grounds urged by the petitioners seeking quashing of the FIR in question are firstly that there is violation of the standing order No. 281 which provides that the list of dowry articles given at the time of marriage be obtained and bills/cash memos in support of the said articles be procured and placed on file.

3. The second ground urged by the learned counsel for the petitioners is that though the complaint was filed at CAW Cell East Delhi it was transferred for investigation on 22nd December, 2015 to PS Nanak Pura without assigning any reason.
4. The third ground urged is that the cognizance is barred by the limitation and it has been taken beyond the period of three years.
5. The fourth ground urged is that the Court at Dwarka trying the offence has no territorial jurisdiction and hence the FIR in question and proceedings pursuant thereto are liable to be quashed.
6. The brief facts of the case are that the petitioner No. 2 and respondent No. 3 were married on 7th March, 2014 and lived as husband and wife initially at Vasant Kunj and later shifted to Preet Vihar, Delhi till 22nd August, 2015. Since the parties could not get along together a complaint was filed by respondent No. 3 with the CAW Cell at Patparganj, on 22nd September, 2015. On the said complaint an FIR was registered on 5th October, 2016 at PS Nanak Pura as the complaint had been transferred to PS Nanak Pura on 22nd December, 2015. After the investigation was carried out charge sheet was filed for offences punishable under Sections 498A/406/34 IPC at the Dwarka Court before the learned Metropolitan Magistrate having territorial jurisdiction over PS Nanak Pura.
7. The allegations of respondent No. 3 in case FIR No. 179/2016 registered on 5th October, 2016 based on the complaint of respondent No. 3 to the CAW Cell Patparganj are of entrustment of jewellery to the mother-in-law immediately at the time of vidai and after the wedding instead of the complainant being taken to the husband's home at Munirka she was taken to Ghaziabad at the house of the mausi of the husband. It is alleged that the

petitioner No. 1, i.e. mother-in-law used to taunt the complainant for light weight jewellery articles and abuse her parents with abusive words. After the ceremonies were finished at Ghaziabad House the jewellery given to the complainant, to be worn was taken aback by mother-in-law and it is the case of the respondent No. 3 that the said jewellery is in the custody of the petitioners till date. It is alleged that the complainant was harassed every single day by not giving food to eat, leaving her alone in single room and being taunted and tortured for not getting good dowry. The complainant parents were forced to give a ground floor portion or terrace portion in the mother's house and items like AC, TV, furniture etc. were demanded.

8. It is alleged that the behaviour of the petitioner No. 2 at Shimla was also not proper and after Shimla she was taken to her husband's permanent house at Aligarh where again she was tortured in the similar manner. It is further alleged that in the month of June the husband shifted their leased house from Munirka to Preet Vihar without her knowledge while she was staying at her mother's house in Laxmi Nagar.

9. Later from the lady residing on the ground floor it was revealed that her husband and in-laws had gone to Aligarh and she did not know when they would return. The whereabouts of the complainant's husband were not even known in his office. Later she got information that they had gone to Aligarh to celebrate Rakhi and would return on 30th August but they did not return nor informed about their returning. None answered the calls and the house was locked and all her belongings and the belongings of the child, hospital vaccination report etc. was kept inside the Preet Vihar house.

10. The allegations of the complainant continue and in these circumstances she was constrained to file the complaint on 22nd September,

2015 to CAW Cell. Contention of learned counsel for the petitioner that standing order No. 281 is violated deserves to be rejected for the statement of learned ASC for the State based on record that the list of dowry articles were duly furnished by the complainant, further in support of her allegation of dowry articles photographs were collected.

11. As regards the contention that the complaint from CAW Cell Patparganj could not be transferred to PS Nanak Pura also deserves to be rejected for the reason that CAW Cell are special units of the police department for dealing with cases relating to women and particularly the matrimonial offence and though CAW Cell Patparganj would have territorial jurisdiction to investigate for offences committed within its territorial jurisdiction, however, CAW Cell Nanak Pura has an over arching jurisdiction for all over Delhi and can investigate the matrimonial offence relating to matrimonial dispute all over Delhi.

12. From the facts as noted it is apparent though cognizance has been taken during the period of limitation but even if it is beyond the period of limitation for the reason Section 406 IPC is a continuing offence and till date the jewellery articles are returned the offence continues to be committed. Further the complaint was filed immediately after petitioner No. 2 and his family members deserted the complaint and their whereabouts were not known. Hence it cannot be said that the cognizance is barred by limitation.

13. 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”. ”

14. 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 as under:

“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.”

15. 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 starts. It was held that :

“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.”

16. 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."

17. Since the parties married in Delhi and the main allegations of harassment are at Delhi, entrustment of jewellery is also at Delhi, the goods are being accounted for at Delhi, cognizance taken by the learned Trial

Court would not be beyond the territorial jurisdiction.

18. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 15, 2019
‘yo’

