

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

% Judgment reserved on: 24th January, 2019
Judgment delivered on: 14th February 2019

+ **CRL.REV.P. 615/2018 & CrI.M.A.28367/2018 (stay)**

SHASHI KUMAR MAHAJAN & ORS Petitioners

versus

STATE & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. D.N. Goburdhan, Adv

For the Respondents: Mr. Hirein Sharma, AFP for the State with SI Sharfuddin, PS Jagat Puri. Mr. Deepak Tyagi, Advocate for respondent No.2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioners impugn order on charge dated 15.05.2018. Petitioner No.1 is the father-in-law; petitioner No.2 is the mother-in-law and petitioner No.3 is the husband of the complainant/respondent No.2. By the impugned order on charge, charge under Section 354/354A/354C IPC has been framed against the petitioner No.1 (father-in-law). Charge under Section 498A/34 IPC r/w Section 3/4 Dowry Prohibition Act and under Section 323/34 IPC has been framed against all the petitioners.

2. Learned counsel for the petitioners submits that the basic ingredients of Sections 354/354A/354C/498A and Section 3/4 of Dowry Prohibition Act and Section 323 IPC are not made out against any of the accused.

3. Learned counsel for the petitioners contends that there was a delay of one month in making the complaint and initially an allegation was made of petitioner No.1 having committed the offence of rape and subsequently in the 164 Cr.P.C statement recorded before the Magistrate the allegation was diluted from rape to that of Section 354 IPC. This, it is contended, shows that the complaint initially made was false to the knowledge of the complainant and as such Trial Court should not have framed charges.

4. It is further contended that prior to giving a statement under Section 161 Cr.P.C to the police based on which an FIR was registered, a DD entry is made in the police station where the complainant had alleged of a domestic fight and there was no allegation of any molestation or rape. Further it is contended that the allegations made by the complainant of demands of dowry and fulfillment of such demand are not substantiated in as much as no evidence has been shown by the complainant of having withdrawn money from any bank account. Further it is contended that in the 164 statement there is no allegation that any amount was paid.

5. Learned counsel for the petitioners further contend that the entire investigation was not conducted in a fair manner by the prosecution and it was completely one sided. He further submits that the call detail records obtained by the prosecution of the husband show that the incident which is alleged to have happened on 09.01.2014 is false as the location of the husband is not of the site of the incident and is somewhere else whereas the complainant in her complaint had categorically stated that husband was present at the time when the incident happened or at least commenced.

6. Thus it is contended that the contents of the FIR are false and as such no charge should have been framed against any of the petitioners.

7. Learned counsel for the petitioners relies on the judgments of the Supreme Court in *Prashant Bharti vs State (NCT of Delhi) 2013 (9) SCC 293* to contend that if material relied on by the accused is sound, reasonable and indubitable, then same can be relied on while considering framing of charge.

8. Reliance is also placed on the judgment of the Supreme Court in *Rajeevan And Anr. vs State Of Kerala, (2003) 3 SCC 355* to contend that if there is delay in registering an FIR the same could be fatal to the prosecution.

9. Further reliance is placed on the judgment of the Supreme court in *E. Sivakumar v. Union of India, (2018) 7 SCC 365* and *Babubhai vs State Of Gujarat & Ors, (2010) 12 SCC 254* to contend that investigation into a criminal offence must be free from objectionable features or infirmities.

10. Per contra, learned APP for the State as also learned counsel for the respondent/complainant contended that there are sufficient incriminating material had surfaced during investigation to substantiate the framing of charge against the petitioners under Section 354/354A/354C/498A/323 IPC. It is contended that there is no inordinate delay in registering the FIR and delay has been sufficiently explained.

11. Reliance is placed on the judgment of the Supreme Court in *State of H.P vs Gian Chand (2001) 6 SCC 71* to contend that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution

case and discarding the same solely on the ground of delay in lodging the first information report, if delay is explained to the satisfaction of the court.

12. Further it is contended that the reliance placed by learned counsel for the petitioner on the call detail record is misplaced as the it is a question of trial as to whether the accused was present at the site or not.

13. Learned counsel further submits that the call records are not sacrosanct in as much as it is not necessary that a person may be carrying his phone. There is always a possibility that the accused may be at a different location that his cell phone and it would be a question for trial.

14. Further it is contended that the complainant in her statement to the police as well as in her 164 statement has very categorically stated about the commission of the offence and given detailed description s of the same.

15. The Trial Court while framing charge in the impugned order has held as under:-

“By placing reliance on the said judicial observations, I have come to an opinion that the complaint of complainant Geeta Khosla contains various allegations of cruelty related to demands of dowry against the accused persons. The complaint prima facie discloses commission of mental as well as physical cruelty on the complainant by her in laws. The complainant has narrated various instances when she was subjected to demands of dowry and when dowry was paid by her parents to the in laws. The complainant has narrated various incidents when her modesty was outraged by her father in law. She has stated that she was beaten up by her in laws while her stay in matrimonial house with a view to coerce her to bring more dowry from her parents. The complainant has also alleged in the complaint that her in laws had installed secret cameras in her room with a view to capture her in her, intimate moments so that she could have

been blackmailed with use of such footage. Though upon investigation, such video cameras could not be recovered, however, the complainant has stated in her complaint that she was made to watch such video footage by her in laws at one instance and this made her certain that her apprehensions were correct. Therefore, merely on the ground that no recovery could be made out, the accused cannot be discharged U/s. 354C IPC in the peculiar circumstances of this case. No grounds for discharge of the accused are made out. Charges be accordingly framed as follows:-

1. *U/s. 354 /354A/354C IPC against accused Shashi Kumar*
2. *U/s. 498A/34 IPC r/w Section 3/4 Dowry Prohibition Act against all the accused.*
3. *U/s. 323/34 IPC against all accused.”*

16. The marriage between the parties was solemnized on 24.08.2013. Subject FIR has been registered on 21.05.2014. The allegation in the FIR are that the marriage between the parties was arranged through a matrimonial company and immediately after the marriage was agreed between the parties, demand of Rs. 2 crores was made by the petitioners which was agreed to by the father of the complainant. It is alleged that the roka ceremony was organized in a hotel by spending Rs.2 lakhs of rupees but the petitioners were not happy with the same and they insisted that ring ceremony should be organized in a better place. Keeping in view the future prospects of the complainant her father acceded to the demand and spent about Rs.6.5 lakhs at the ring ceremony.

17. A demand was made by the husband for an Audi car at the time of the marriage, however, as he was a defaulter and not eligible for loan, a Mercedes car was given and approximately Rs.1.43 crores was spent on the

marriage. It is alleged that immediately on the entry of the complainant into the family, demands were made by the petitioners for money and jewellery. Further it is alleged that when the father of the complainant was hospitalized the husband had told the complainant that her father had agreed to pay Rs.50 lakhs, however, had not paid the said amount.

18. Apart from the above, there are several allegations made by the complainant against the petitioners giving specific instances with dates where it is alleged that demands of different amounts of several lakhs was made by the petitioners and specific dates have been mentioned where it is alleged that amounts ranging from Rs.5 lakhs to Rs.7 lakhs was paid in cash to the petitioners.

19. The FIR also notes that there are specific allegations against the father-in-law where he is alleged to have commented upon the physical appearance of the prosecutrix and stated that she should wear short clothes at home in his presence. It is alleged that when such instances were pointed to the mother-in-law and her husband they supported the father-in-law. Instances have also been cited with dates and time where it is alleged that the petitioners physically assaulted the complainant. Allegations have specifically been made against the father-in-law alleging that he would at instances touch her private parts and his such action was supported by the mother-in-law and her husband.

20. It is alleged that the complainant found a CCTV camera installed in her bedroom hidden in a wall light. When this was pointed out to the mother-in-law she is alleged to have stated that this was installed to capture her videos in intimate moments which would be sold if their demands for

money was not fulfilled. Evidence in the form of photographs of the lampshade with CCTV camera installed in the bed room of the complainant had been supplied by the complainant to the IO.

21. It is alleged that the prosecutrix was made to watch a video containing intimate scenes in the presence of the father-in-law and mother-in-law. It is alleged that while a video was being played the mother-in-law left the room and locked the door from outside and the father-in-law is thereafter alleged to have touched her private parts by inserting his hand in her lower. Other instances have also been cited by the prosecutrix in her complaint to the police.

22. The instance when the father-in-law is alleged to have touched her private parts is of 21.04.2014. The subject complaint has been lodged on 21.05.2014. In her subsequent statement recorded under Section 164 Cr.P.C with regard to the incident of 21.04.2014 it is alleged that father-in-law had touched her private parts over her lower. Allegation as recorded in the FIR that he had inserted his hand inside her lower was not substantiated in the 164 Cr.P.C statement wherein the prosecutrix had stated that he had touched her private parts from above her clothes, no offence under Section 376 was made out and accordingly charge for the same has not been framed.

23. Perusal of the record shows that there are specific allegations giving detailed instances of harassment, demands for dowry and of payment made by the complainant and her family to the petitioners and as such there is no infirmity in the view formed by the Trial Court that the complaint prima

facie discloses commission of mental as well as physical cruelty on the complainant by her in-laws.

24. The Trial Court has rightly noticed that complainant has narrated instances with specifics when she was subjected to demands for dowry and when dowry was paid by her parents to the in-laws. Complainant has also narrated various instances where allegedly her modesty was outraged by her father-in-law. Instance of beatings have also been cited by the complainant to coerce her to bring dowry from her parents. The instances and specifics narrated by the complainant raise grave suspicion of the petitioners having committed the offence for which they have been charged by the Trial Court.

25. Reliance placed by learned counsel for the petitioners on the judgment in the case of *Prashant Bharti vs State (NCT of Delhi)* (*supra*) is misplaced. In the said case Supreme Court noticed that the material relied on by the accused ruled out the assertions contained in the charges leveled against the accused and as such Supreme Court was of the view that such a material which was of sterling and impeccable quality could form the basis of quashing of criminal proceedings.

26. In the instant case the petitioners have sought to drill holes in the prosecution story, however, unsuccessfully. There is no counter material/evidence to show that the allegations made by the prosecutrix are false or unreliable for the purposes of framing of a charge. There is no material which is produced by the petitioners which could be stated to be sound, reasonable or of sterling and impeccable quality.

27. Further reliance placed by learned counsel for the petitioners on the judgment in *Rajeevan And Anr. vs State Of Kerala, (Supra)* to contend that delay in registering a FIR could be fatal is also misplaced. Delay may have a bearing on the veracity of the allegations but that has to be tested by the Trial Court at trial. In the said case Supreme Court was considering a case which was arising out of an appeal after trial and not a case of framing of charge.

28. In the facts of the present case Whether there is delay in registering the FIR and whether that has been explained or not or is fatal to the prosecution is something which the Trial Court would test at trial. No doubt gross and inordinate delay in making a complaint could be one of the factors which could have a bearing on framing of charge, however, in the instant case there is no inordinate delay.

29. As noticed above, the marriage between the parties took place on 24.08.2013 and subject FIR has been registered on 21.05.2014. The prosecutrix has given date wise instances of the treatment which was meted out to her. The last incident of assault by father-in-law is alleged to be of 21.04.2014 i.e. one month before the registration of the FIR. The complainant has sought to explain the same by contending that keeping in view the relations between the parties she did not inform anyone of the incident, however, after about a month she narrated the incident to her parents and consequently the complaint was made.

30. In any eventuality whether there is an inordinate delay or delay is fatal is something which would be tested at trial. At this stage in the facts of the present case it cannot be a case for discharge.

31. Judgments relied on by learned counsel for the petitioners in *E. Sivakumar v. Union of India* and *Babubhai vs State Of Gujarat & Ors (Supra)* to contend that investigation must be free and fair do not help the case of the petitioners in as much as there is no material produced to show that investigation was one sided or unfair.

32. In so far as reliance on call records are concerned as noticed above, it is an issue of trial and cannot form the basis of a discharge in the facts of the present case.

33. In view of the above, I find no infirmity in the view taken by the Trial Court and the charge framed against the petitioners.

34. The petition has no merit and is accordingly dismissed.

35. Order *Dasti* under signatures of Court Master.

February 14th, 2019
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SANJEEV SACHDEVA, J