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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18th January, 2019

+ CRL.M.C. 3372/2016

SHWETA BHATIA

..... Petitioner

Through: Mr. R.K. Tarun and Mr. Rohit
Shukla, Advocates

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
State

Mr. Vivek Aggarwal, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. First Information Report (FIR) no.101/2004 was registered by police station Shalimar Bagh for offences punishable under Sections 498A, 406, 34 of Indian Penal Code, 1860 (IPC) at the instance of the petitioner (hereinafter referred to as the “complainant”). The case was subjected to investigation and on the basis of evidence gathered, report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) was submitted seeking trial of the second and third respondents, they being the husband and mother-in-law respectively of the complainant. The prosecution proposed trial to be held on charge for offences punishable under Sections 498A, 406, 34 IPC. The

Metropolitan Magistrate took cognizance of the said offences on the basis of evidence which was presented with the charge-sheet and thereafter considered the question of charge.

2. By order dated 05.03.2015, the Metropolitan Magistrate recorded the view that no charge was made out against the third respondent (mother-in-law). She also concluded that no charge was made out against the second respondent (husband) for offences under Section 498A IPC, charge, however, directed to be framed for offence under Section 406 IPC against the second respondent (husband).

3. The above said order dated 05.03.2015 of the Metropolitan Magistrate was challenged in the court of the Sessions by the petitioner (complainant), the State and by the second respondent (husband) invoking the revisional jurisdiction of the said court by Criminal Revision Petition Nos.14/2015, 31/2015 and 17/2015 respectively. All the three revision petitions were decided by the Additional Sessions Judge by common order dated 10.06.2016. While upholding the view taken by the Magistrate vis-à-vis the third respondent (mother-in-law), as indeed against the second respondent on the accusations under Section 498A IPC, the revisional court found that no charge was made out against the second respondent (husband) even for offence under Section 406 IPC. Thus, the order of the Magistrate directing such charge to be framed was also set aside and the proceedings in the criminal case before the Metropolitan Magistrate drawn to a close.

4. Feeling aggrieved, the complainant approached this court by the petition at hand invoking its inherent power and jurisdiction under Section 482 Cr. PC submitting that the discharge of the second and third respondents is perverse, crucial evidence having been glossed over and overlooked, the approach and directions of the two courts below being improper.

5. Notice was issued on this petition by order dated 15.09.2016. While the first respondent / State supports the petition insisting that the discharge order was erroneous, the petition was resisted initially by the second and third respondents.

6. When the matter is taken up today, the court is informed by the counsel representing the second and third respondents that the third respondent Smt. Shashi Bhatia, wife of late Sh. K.K. Bhatia, has since passed away, the death having occurred on 07.11.2018. This fact is orally confirmed by the counsel for the petitioner. Be that as it may, the State will be obliged to verify this fact independently. Nonetheless, the private parties being *ad idem* on this submission, the matter is considered on the assumption that the third respondent has indeed died and the proceedings against her have abated.

7. After some hearing, on instructions from the second respondent who is present in person, his counsel submitted, without prejudice to his contentions and defences, that he would like to concede that charge be framed and he be put on trial for offences under Sections 498A and 406 IPC. On perusal of the material submitted with the charge-sheet, this court finds this fair concession of the defence to be appropriate.

8. Thus, the impugned orders of the courts below are set aside. The petition is allowed. The proceedings in the criminal case arising out of the aforementioned FIR before the Metropolitan Magistrate stand revived. The trial court is directed to verify the fact of the death of the third respondent Shashi Bhatia and thereafter proceed further to pass appropriate orders inclusive of formal framing of charges against the second respondent for offences under Sections 498A and 406 IPC. All contentions of both sides are kept open on merits of the case. Nothing in this order shall be construed as reflective of any opinion of this court on merits.

9. The second respondent shall appear before the Metropolitan Magistrate for further proceedings in accordance with law on 18.02.2019. Needless to add, he shall be obliged to furnish bail bonds in terms of the order that would have been earlier passed to regulate his presence in future.

10. The petition is disposed of in above terms.

R.K.GAUBA, J.

JANUARY 18, 2019

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