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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th May, 2019

+ CRL.M.C. 4553/2016 & Crl.M.A. 5686/2018, 10466/2018,
28674-75/2018, 33214/2018

SMT SHALINI ARORA Petitioner
Through: Mr. Vivek Aggarwal, Adv.

Versus

STATE (GOVT OF NCT OF DELHI) & ORS..... Respondents
Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Rakesh
Kumar, PS Dwarka South.
Respondent no.2 in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was married to the second respondent as per Hindu rites and ceremonies on 26.09.1998. From out of their cohabitation, a girl child (named Aditi) took birth in due course. On 09.11.2011, the petitioner lodged complaint with Crime against Women Cell (CAW Cell) making allegations, *inter alia*, of she having been subjected to cruelty by the husband (the second respondent), his mother (the third respondent) and his (then) unmarried sister (the fourth respondent). The complaint remained pending with CAW Cell

for quite some time and was eventually withdrawn by the petitioner on 05.01.2012. Later, on 31.12.2012, she lodged a fresh complaint, again with CAW Cell, referring, *inter alia*, to the previous complaint stating that she had been persuaded to withdraw the same, the respondents having played a trick upon her with *mala fide* motive, there being no sincerity on their part, the second respondent (husband) not having cared to rejoin her company or that of the child of the parties.

2. The complaint dated 31.12.2012 eventually resulted in first information report (FIR) no.92/2013 being registered on 07.04.2013 by police station Dwarka South for offences under Sections 498A/406/34 of Indian Penal Code, 1860 (IPC). The investigation into the said FIR culminated in final report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being submitted in the court of Metropolitan Magistrate on 19.11.2013. The Metropolitan Magistrate took cognizance and summoned the above-mentioned three respondents as accused. But later, by order dated 28.09.2015, the Metropolitan Magistrate held that no case was made out for putting any of them on trial, they consequently having been discharged.

3. The order dated 30.09.2015 of the Metropolitan Magistrate was challenged by the petitioner in the court of Sessions by invoking its revisional jurisdiction (by CR No. 03/2016) but without success. The Additional Sessions Judge dismissed the revision petition on 09.03.2016, affirming the view taken by the trial court, though on slightly different reasoning.

4. Feeling aggrieved by the above-mentioned orders of the Metropolitan Magistrate, and of the revisional court, the present petition was filed invoking the inherent power of this Court under Section 482 Cr.P.C., the contention of the petitioner being that the discharge of the second to fourth respondents is in the nature of abuse of the legal process, the crucial evidence having been overlooked and glossed over, the principles required to be borne in mind at the stage of consideration of charge having been followed more in breach than in compliance.

5. The complaint dated 31.12.2012 on the basis of which FIR was registered was expressly stated to be one lodged with police in continuation of the previous complaint dated 09.11.2012 which had been withdrawn on 05.01.2012. The petitioner had requested the narration of events to be read in continuity of her previous complaint. The allegations in the said complaints, referred, *inter alia*, to the taunts and innuendos to which the second respondent had subjected the petitioner on various occasions to convey his displeasure over insufficient dowry or gifts which had been given by the parental family of the petitioner at the time of marriage or thereafter. The complaints also referred to various acts of commission and omission, which have been summarized to an extent by the Metropolitan Magistrate in the impugned order, showing unreasonable and irresponsible attitude of the second respondent towards his wife (the petitioner) and also towards the daughter of the parties. She has narrated in her complaints various episodes wherein harassment, humiliation and torture was inflicted upon her, she having been

threatened, shouted at, made to unnecessarily apologize even by being forced to rub her nose on the floor by the husband. She has narrated events wherein he expressed dis-satisfaction on account of he being deprived of the property of the in-laws (i.e. the parental family of the petitioner). Though she would state that she was not physically hurt at any stage, there are many episodes of filthy abuses having been hurled at her, she being forced to live in constant fear. She has also narrated events about she being subjected to sexual abuse (unnatural sex) by the second respondent against her will or consent, the quarrels, as per the narration in the FIR, being replete with many an instance, some touching upon the illicit desire for precious gifts to be brought by the petitioner from the parental home.

6. In *Sajjan Kumar vs. Central Bureau of Investigation (2010) 9 SCC 368*, the principles to be followed at the stage of consideration of a criminal case for framing of charge were summarized by the Supreme court as follows:-

“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.”

(emphasis supplied)

7. The penal clause contained in Section 498A IPC has the objective of punishing a husband, or his relative, for having subjected the woman to “cruelty”, the said expression having been defined thus:-

“Explanation- For the purpose of this section, “cruelty” means – (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

8. It is well settled that the harassment of the married woman with a view to coerce her or any of her relatives to meet unlawful demand for property or valuable security is only one possible kind of cruelty that can be visited with punishment under Section 498 A IPC. The clause (a) of the explanation appended to Section 498 A IPC, as quoted above, clearly indicates that even such willful conduct as is of a nature that it is likely to drive a woman to commit suicide or expose her to grave injury, danger to life or to her limb or to her mental or physical health also constitutes cruelty within the meaning of Section 498 A IPC.

9. The approach of the Metropolitan Magistrate in the order dated 30.09.2015, whereby it was concluded that charge under Section 498A IPC was not made out was incorrect and erroneous for the reason the focus therein was to search for credible allegations as to “unlawful demand of property”. The other allegations of the cruel conduct, the narration in the complaints indicating it to be virtually recurrent and unending seems to have escaped the attention of the Metropolitan Magistrate. The revisional court, in contrast, took an entirely different, again erroneous, approach. It referred to the withdrawal of the first complaint on 05.01.2012 and treated this to be an act on the part of the petitioner of condoning the acts of cruelty anterior thereto. In the considered view of this Court, the petitioner having clearly stated in the complaint (leading to the registration of the FIR) that she had been tricked into withdrawing the previous complaint, such approach of the revisional court at the stage of charge was neither proper nor incorrect.

10. On the above facts and in the circumstances, charge is *prima facie* found to be made out against second respondent for he to be put on trial for offence under Section 498 A IPC, his conduct being covered by both clauses of the explanation appended to the said provision.

11. But, in the opinion of this Court, there is no case made out for the conclusions reached by the trial court, as affirmed by the revisional court, against third and fourth respondents to be disturbed or interfered with. The learned counsel for the petitioner, on being asked, fairly conceded that there are no clear allegations of any complicity on the

part of the said respondents in the conduct of the second respondent towards the petitioner. He also fairly conceded that the allegations in the complaints with regard to the *streedhan* of the petitioner are vague. There is no clarity as to whom it was entrusted. There is no allegation of any demand of restoration or refusal to do so. Thus, the prayer for putting the second to fourth respondents on trial for the offence under Section 406 IPC and further for putting the third and fourth respondents on charge for offences under Section 498 A IPC cannot be accepted.

12. For above reasons, the petition is partly allowed. The impugned order dated 28.09.2015 as corrected on 31.10.2015 of the Metropolitan Magistrate and order dated 09.03.2016 of the revisional court insofar as thereby the second respondent Rahul Arora was discharged, are set aside. On the available material presented with the charge-sheet, charge for the offence under Section 498 A IPC is made out against the second respondent Rahul Arora and will accordingly be framed and the trial held qua him.

13. Consequently, the proceedings in the criminal case arising out of the charge-sheet stand revived on the file of the Metropolitan Magistrate. The same shall be taken up for further proceedings in accordance with law on 04th July, 2019. The second respondent is directed to present himself to face the said proceedings in the concerned court on the said date, whereupon the Metropolitan Magistrate shall frame formal charge in terms of the above directions and proceed with the trial as per law.

14. The applications CrI.M.A. 5686/2018 and CrI.M.A. 28674/2018, both of second respondent and CrI.M.A. 33214/2018 of the third respondent each invoking, *inter alia*, Section 340 Cr.P.C. are found to be misconceived insofar as the context of the present petition is concerned. They are dismissed with these observations. The other pending applications are rendered infructuous and also disposed of.

R.K.GAUBA, J.

MAY 07, 2019

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