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NEUTRAL CITATION NO: 2022/DHC/003143

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

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **CRIMINAL MISCELLANEOUS CASE 994/2013**

Between:-

**SMT. SHIPALI SHARMA
D/O SH. LAVKESH SHARMA
W/O SH. GAURAV SHARMA
R/O HOUSE NO. H-1/125,
GROUND FLOOR, VIKAS PURI,
NEW DELHI – 110018 PETITIONER**

(By Shri Rudra Pratap, Advocate.)

AND

STATE RESPONDENT NO. 1

**SAURABH SHARMA
S/O SH. JAGMOHAN SHARMA
R/O HOUSE NO. H-1/125,
FIRST FLOOR, VIKAS PURI,
NEW DELHI – 110018 RESPONDENT NO. 2**

(By Shri Hemant Mehla, APP for State along with SI Vijay Pal Singh, PS CWC Nanak Pura.

Shri S.C.Singhal and Shri Pradeep Verma, Advocates for R-2.)

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Pronounced on : 18.08.2022

JUDGMENT

NEUTRAL CITATION NO: 2022/DHC/003143



1. This petition under Section 482 of Cr.P.C. is directed against the order dated 07.12.2012 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi in CrI. Rev. No.146/2012, whereby, revision petition filed by the petitioner against the discharge of respondent No.2, has been dismissed.
2. Brief facts of the case are that the petitioner had lodged an FIR No.53/2008 against her husband and other family members including respondent No.2. The respondent No.2 is the brother-in-law of the petitioner. The police registered offences under Sections 498A/34 of the IPC against the husband of the petitioner and her in-laws. The police, after investigation, submitted the chargesheet against all the accused persons.
3. On 25.08.2012, the learned Metropolitan Magistrate heard the parties on charge. After perusal of the material available on record, the learned Metropolitan Magistrate did not find any specific allegation of harassment or demand of dowry against respondent No.2/brother-in-law of the petitioner. Learned Metropolitan Magistrate opined that the allegations were very vague and do not amount to cruelty or harassment under Section 498A of the IPC. No *prima facie* case was made out and, therefore, the learned Metropolitan Magistrate discharged respondent No.2 from charges under Section 498A/34 IPC. The learned Metropolitan Magistrate, however, framed charges against all other accused persons. The petitioner, therefore, preferred revision under Section 397 of Cr.P.C. before the court of learned Additional Sessions Judge. The learned revisional court, while placing reliance on the decisions of the Hon'ble Supreme Court in the matters of ***Union of India v. Prafulla***

Kumar Samal and Anr.¹, Dilawar Balu Kurane v. State

NEUTRAL CITATION NO: 2022/DHC/003143



Maharashtra² and Sajjan Kumar v. Central Bureau of

Investigation³, has held that the alleged act of the respondent No.2 does not amount to cruelty, as per explanation (a) and (b) of Section 498A of IPC and, therefore, dismissed the revision filed by the petitioner. In other words, the discharge of Respondent No.2 was confirmed by the learned revisional court.

4. Shri Rudra Pratap, learned counsel appearing on behalf of the petitioner submits that both the courts have gravely erred in not considering the allegations made in the FIR which clearly constitute an offence under Section 498A of IPC. He has referred to various paragraphs of the FIR to demonstrate that specific allegations have been made against the in-laws of the petitioner. According to him, when it is mentioned that the in-laws were subjecting the petitioner to harassment, it is not, therefore, necessary to make a specific allegation against each of the in-laws' and that, in-laws would include all, including the Respondent No.2.

5. Shri S.C. Singhal, learned counsel appearing on behalf of respondent No.2 opposes the prayer and submits that this court should not interfere with the well-reasoned order passed by the learned revisional court. The allegations in the FIR are not specific and, therefore, the learned Metropolitan Magistrate has rightly discharged respondent No.2 and no illegality has been committed by the revisional court in dismissing the revision petition.

6. I have heard learned counsel appearing on behalf of the parties and perused the record. Section 498A of the IPC prescribes that whoever, being the husband or the relative of the husband of a

¹ 1979 3 SCC 4

² 2002 2 SCC 135

³ 2010 9 SCC 368



woman, subjects such woman to cruelty, shall be punished by imprisonment for a term which may extent to three years and shall also be liable to fine. For the purposes of Section 498A, Explanation (a) and (b), clearly gives out as to what would “cruelty” mean. It has been prescribed that “cruelty” means any willful 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 the life, limb or health (whether mental or physical) of the woman; or 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.

7. It is, thus, seen that in the instant case, at best, the petitioner can claim applicability of Explanation (b) of Section 498A, however, the same also requires an element of harassment or coercion for unlawful demand for any property or valuable security and failure thereof to meet such a demand. In the instant case, general allegations are pointed out that all in-laws were demanding dowry. The learned Additional Sessions Judge in paragraph Nos.9 and 10 has dealt with the allegations and found that no offence under Section 498A of IPC is made out. The relevant paragraph Nos.9 and 10 are reproduced as under:

“9. I have perused the complaint dated 15.04.2008 which contains the detailed allegations made by the petitioner against her husband and in-laws. The only allegation made against respondent no.2 in the complaint is that her brother in-law i.e. respondent no.2 had a bad eye on her and in-laws supported him. In the opinion of this court, the alleged act of respondent no.2 in having a bad eye on the petitioner does not amount to cruelty as per explanation (a) and (b) of Section 498A IPC.



10. The other allegations against respondent no.2 are that petitioner's husband used to invite respondent no.2 in his room and used to watch TV till 12 o'clock in the night due to which petitioner was made to wait in the drawing room. It is further alleged in the complaint that petitioner's husband used to force her to go with respondent no.2 and when petitioner opposed this, her husband and in-laws used to beat her. The aforesaid allegations of the petitioner are against the conduct of her husband and no cruelty has been alleged against respondent no.2 in the above stated allegations in terms of Explanation (a) and (b) of Section 498A IPC. There are no other allegations alleging harassment by respondent no.2 for the purpose of dowry by the petitioner in her complaint. Therefore, from the aforesaid allegations made in the complaint, no offence u/s 498A IPC is made out against respondent no.2. Hence, the ld.trial court rightly discharged the respondent no.2 for the offence u/s 498A IPC as per law laid down by the Hon'ble Supreme Court of India as discussed hereinabove."

8. The Hon'ble Supreme Court recently, in the case of **Kahkashan Kausar Alias Sonam and Ors. v. State of Bihar and Ors.**⁴ has considered the petition seeking quashing of FIR relating to omnibus allegations made against all family members of the husband. While placing reliance on its earlier pronouncements in the matters of **G. V. Rao v. L.H.V. Prasad & Ors.**⁵, **Preeti Gupta & Anr. v. State of Jharkhand & Anr.**⁶, **Geeta Mehrotra & Anr. v. State of U.P. & Anr.**⁷, **Arnesh Kumar v. State of Bihar & Anr.**⁸, **Rajesh Sharma & Ors. v. State of U.P. & Anr.**⁹ and **K. Subba Rao v. State of Telangana**¹⁰, the Hon'ble Supreme Court in the matter of **Kahkashan Kausar alias**

⁴ 2022 6 SCC 599

⁵ 2000 3 SCC 693

⁶ 2010 7 SCC 667

⁷ 2012 10 SCC 741

⁸ 2014 8 SCC 273

⁹ 2018 10 SCC 472

¹⁰ 2018 14 SCC 452

Snam and Ors. (*supra*) has noticed the misuse of Section 498A I

NEUTRAL CITATION NO: 2022/DHC/003143



The Hon'ble Supreme Court in paragraph No.17 of its pronouncement held that if false implications, by way of general omnibus allegations made in the course of matrimonial dispute are left unchecked, the same would result in misuse of the process of law. Paragraph No.17 is being reproduced as under:

“The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

9. It is a settled law that a judge, while considering the question of framing of charges, is certainly empowered to weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the material placed before the court discloses great suspicion against the accused, which has not been properly explained, the court will be fully justified in framing the charge and proceeding with the trial. However, if two views are equally possible and the judge is satisfied that the evidence produced before him gave rise to some suspicion but not grave suspicion against the accused, the judge will be fully justified to discharge the accused. In exercise of jurisdiction under Section 227 of Cr.P.C., the judge cannot act merely as the 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 and should not make a roving

inquiry into the pros and cons of the matter and weigh the evidence

NEUTRAL CITATION NO: 2022/DHC/003143



if he was conducting a trial [*Prafulla Kumar Samal and Anr. (supra)*].

10. Taking into consideration the overall facts of the present case and in the absence of any specific allegation or role attributed to respondent No.2, this court does not find any justification to take a different view than the one which has already been taken by the learned Metropolitan Magistrate and affirmed by the learned revisional court.

11. In view of the aforesaid, the instant petition stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 18, 2022

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