



\$~

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

%

Reserved on:19.07.2023
Pronounced on: 31.07.2023

+ CRL.REV.P. 125/2018

LAXMI

..... Petitioner

Through: Ms. Kavita Jha, Advocate

versus

KANHAIYA LAL GUPTA & ORS.

..... Respondents

Through: Mr. Raj Kumar Verma,
 Advocate for R-1 to R-6.
 Mr. Satish Kumar, APP for the
 State/R-7.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 397/401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking setting aside of impugned order dated 27.10.2017 passed by the learned Additional Sessions Judge-02, Patiala House Courts, New Delhi in Criminal Appeal No. 39/2017.

2. Brief facts of the case are that the petitioner i.e. Laxmi and respondent no. 1 i.e. Kanhaiya Lal Gupta had got married on 09.05.2005 at Khairthal, Rajasthan according to Hindu rites and



ceremonies. Although the marriage had been consummated, no child was born from the wedlock. It was the case of petitioner that at the time of the marriage, father of respondent no. 1 had taken Rs.1,40,000/- from the petitioner's mother for arrangement of marriage in Khairthal. However, despite this payment, respondent no. 1 and his relatives had expressed dissatisfaction with the arrangements made. It was further stated that immediately after the marriage, the respondent no. 1 had informed the petitioner that he had agreed to the marriage solely for dowry and cash, as he was in dire need of money for his business, and that he had no interest in the petitioner and did not like her. It was alleged that respondent no. 1 had instructed the petitioner not to expect anything from him and had asked the petitioner's mother for daily expenses and needs. In addition to this, respondent no. 1 and his family members had demanded motorcycles, domestic articles such as fridge, television, washing machine, etc. and had threatened the petitioner. Further, the respondents had warned the petitioner that failure to bring money for these items would prevent her from living peacefully in the matrimonial home. Subsequently, the petitioner had returned to her mother's home in June, 2005. However, she had later returned to her matrimonial home, where she had again endured the same cruelties and demands for a motorcycle, and respondent no. 1 along with his brother and other family members had attempted to set the petitioner on fire by using kerosene oil on 27.01.2006. Further, the respondents had been entrusted with the stridhan articles by the petitioner, which had not been returned. Later, the petitioner had got an FIR bearing no. 204/2007 registered at Police Station Dabri, Delhi under Section



498A/406/34 of Indian Penal Code, 1860 ('IPC') against the respondent and his family members.

3. After the conclusion of trial, the learned Metropolitan Magistrate (Mahila Court-02), Dwarka, New Delhi *vide* judgment dated 28.10.2015 had acquitted all the accused persons/respondents in the present FIR. Thereafter, the petitioner had preferred an appeal under Section 372 of Cr.P.C. which was also dismissed *vide* judgment dated 27.10.2017 by the learned ASJ, thereby affirming the decision of learned MM.

4. Aggrieved by the orders passed by both the Courts below, the petitioner has approached this Court by way of present revision petition.

5. Learned counsel for the petitioner states that the petitioner was subjected to cruelty, and she was forced to leave her matrimonial home twice. It is stated that the petitioner was subjected to cruelty within the meaning of Section 498A of IPC, and the learned ASJ erred in interpreting it within the meaning of cruelty under Section 304B. It is further submitted that the testimony of one Sh. Praveen Gupta is not hearsay as he was closely related to the petitioner and the respondents, and had acted as mediator in their marriage. It is thus stated that both the Courts below had failed to appreciate the evidence correctly.

6. *Per contra*, learned counsel for the respondents states that there are no witnesses who support the case of complainant/petitioner, and the only public witness of the incident is a hearsay witness and his testimony cannot be relied upon. It is stated that the allegations of physical abuse are not corroborated by any medical record or MLC. It



is further stated that the statements of the complainant are contradictory, since first she had mentioned that her parents had given the amount of Rs.1,70,000/- to respondents, and then during the cross-examination she had stated that the amount was given by her maternal uncle. It is thus prayed that present petition be dismissed.

7. This Court has heard the arguments addressed by both sides and has perused the material placed on record.

8. It is the case of the petitioner that the material witnesses and evidence on record has not been appreciated by learned MM as well as learned ASJ while acquitting the respondents under Section 498A and 406 of IPC.

9. To appreciate the contentions raised on behalf of the petitioner, Section 498A of IPC has been reproduced as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. 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.”

10. It can be observed that as per Section 498A of IPC, cruelty refers to specific behaviors or actions that are intentionally inflicted upon a



woman by her husband or his relatives. These behaviors fall under two main categories:

- (i) Any willful conduct that is likely to drive the woman to commit suicide or cause her serious harm to her life, physical or mental health, or limbs.
- (ii) Harassment of the woman, which includes actions with the purpose of coercing her or any person related to her to meet unlawful demands for property or valuable security. It also covers instances where harassment occurs due to her or any related person's failure to meet such demands.

11. In this regard, this Court also takes note of the essential ingredients of Section 498A of IPC, which were discussed by the Hon'ble Apex Court in case of *U. Suvetha v. State* (2009) 6 SCC 757, and the relevant observations are reproduced as under:

"7. ...Ingredients of 498A of the Indian Penal Code are :-

- a) The woman must be married
- b) She must be subjected to cruelty or harassment and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

13. Further more, the provision is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly.

This Court in *T. Ashok Pai v. Commissioner of Income Tax, Bangalore*, [2007 (8) SCALE 354] held as under :-

"19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See *P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr.* 1995 Supp (2) SCC 187]."



12. Thus, Section 498A of the Indian Penal Code has three essential elements, i.e. (i) the woman must be married; (ii) she must have experienced cruelty or harassment; and (iii) the cruelty or harassment must have been inflicted either by her husband or his relatives. It is noted that the provision requires careful interpretation and the burden of proof lies heavily on the prosecution, making it harder to prove someone guilty. It has been emphasized by the Hon'ble Apex Court that stringent laws necessitate a more meticulous interpretation and thus, the prosecution must provide strong evidence to establish guilt under this section.

13. As regards acquittal under Section 498A of IPC, it has been observed and examined by both the Courts below that the complainant had failed to adduce evidence, sufficient enough to secure conviction under Section 498A. In this regard, this Court has gone through the records of the case including the testimonies of the witnesses and having carefully examined the same, this Court is of the opinion that:

- (i) The only witnesses examined to prove cruelty is the complainant herself, while the only public witness i.e. Praveen Gupta had merely provided hearsay evidence which he even himself admitted. He has stated that no demand was made by the accused persons in his presence, and he learnt about the alleged demand from the complainant's mother when she was at her parental home.
- (ii) The complainant was unable to provide specific dates when the dowry demand was made, and she also lacked specific details regarding the filthy language used against her by the respondents.



(iii) The complainant mentioned demands for a motorcycle and other articles, but the only public witness claimed that only Rs 50,000/- were demanded, and this information was informed to him by the complainant herself.

(iv) Although the complainant has alleged that she was taunted by the accused/respondent no. 1 and his family members and forced to eat stale food, no specific incidents were given to support these claims. The complainant had stated about an attempt by the accused and his family members to burn her on 27.01.2006, however, she did not report the incident to the police or any other authority until one year later when she informed the Delhi Police.

(v) Additionally, there is a lack of corroborative medical evidence, and no independent witnesses, including the complainant's parents and brother, have been examined before the learned Trial Court.

14. Therefore, keeping in view the law on Section 498A of IPC and the facts and circumstance of the present case, evidence placed on record and the conclusion of both the Courts below, this Court is of the view that the prosecution had failed to prove its case under Section 498A beyond reasonable doubt.

15. Since the petitioner has also challenged the acquittal of respondent under Section 406 of IPC, this Court deems it appropriate to briefly discuss the law on same.

16. Section 406 of IPC provides punishment for criminal breach of trust, and the offence of criminal breach of trust has been defined under Section 405 of IPC. The Hon'ble Apex Court in **Gurukanwarpal Kirpal Singh v. Surya Prakasam & Ors. SLP(Crl.) 5485/2021** had



made the following observations with respect to essentials of Section 405 of IPC:

“...Section 405 of the Indian Penal Code reads as hereunder :-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

The High Court rightly held that the said **provision would be attracted where the accused person had been entrusted with property, and such property had dishonestly been misappropriated or converted by him to his own use.** The provision would also be attracted if the accused person dishonestly used or disposed of such property in violation of any direction of law. **The High Court rightly found that the sine qua non for attracting the said provision was the entrustment of the property with the accused persons...**”

(Emphasis supplied)

17. In view of the aforesaid, this Court has considered the rival contentions of the parties and the material on record as well as the testimonies of the witnesses on the aspect of acquittal of respondents under Section 406 of IPC. In this regard, this Court notes that:

- (i) The complainant was unable to recall the specific date of purchase of the jewellery articles that constituted her stridhan, and no receipts from the jeweller or any evidence from the said jeweller were presented for examination. Moreover, there was lack of independent witnesses to corroborate the entrustment of the jewellery.
- (ii) The sole public witness, when questioned, categorically stated



that he had not witnessed any demand being made by the accused persons and his knowledge of the alleged demand was derived from information provided by the complainant's mother.

18. Therefore, in light of the law on Section 405/406 of IPC, the prosecution had failed to prove its case under Section 406 of IPC beyond reasonable doubts.

19. Thus, in view of the foregoing discussion, this Court finds no grounds for setting aside the judgment passed by the learned Metropolitan Magistrate and impugned order passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi before this Court.

20. Accordingly, the present petition stands dismissed.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 31, 2023/zp

भारतमेव जयते