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with Sikh rites and rituals. The petitioner was 1.5 months pregnant when respondent Nos.2 to 4-accused spiked her juice with some medicine that caused termination of the said pregnancy. Moreover, respondent Nos.2 to 4-accused were constantly harassing the petitioner to bring more dowry. Owing to the same, the parents of the petitioner gave Rs. 1,00,000/- on 25.11.2011. On the same day, respondent Nos.2 to 4-accused started demanding for a bigger car as the petitioner had brought an Alto car in dowry. The petitioner was beaten, starved, attempted to strangled and threatened that this treatment will continue till she brings them a bigger car. Respondent No.2 also subjected the petitioner to non-consensual unnatural sex. He further stated that he has illicit relations with one Aman and one Kulvinder Kaur, and that he wants to marry Kulvinder Kaur. Further, respondent No.2 threatened to implicate the petitioner and her family in false cases by exercising his political influence. Ultimately, on 12.08.2012, the petitioner was turned out of her matrimonial home. Subsequently, on 02.10.2013, respondent No.2 arrived at the workplace of the petitioner and threatened to kill her. He also called the petitioner on 25.08.2014 and threatened to kill her again. The *stridhan* of the petitioner was entrusted to the respondents-accused, however, they have declined to return the same to her.

3. Based on the material available, the learned trial Court discharged respondent Nos.2 to 4-accused vide order dated 17.11.2015(Annexure P-1) citing lack of jurisdiction. Aggrieved by the same, the petitioner approached the learned lower Appellate Court, however the revision petition filed by her was dismissed vide order dated 02.11.2016 (Annexure P-3).



4. Learned counsel for the petitioner contends that respondent No.2 came to the workplace of the petitioner i.e. Kapisthal Institute of Medical Sciences and Nursing, Gharasi, Tehsil Thanesar, District Kurukshetra and threatened to kill her. In fact, the dowry articles were handed over to the petitioner by respondent Nos.2 to 4-accused, through the police, at Kurukshetra. The allegations levelled against respondent Nos.2 to 4-accused were found to be correct during the investigation as reflected in the final report under Section 173 Cr.P.C. which was presented in the Court on 16.03.2015. As such, the FIR was rightly registered at Police Station Sadar Thanesar but, the learned Courts below have erred in discharging respondent Nos.2 to 4-accused for the lack of jurisdiction as the offences under Sections 406 and 498-A IPC are continuing offences. Moreover, at the stage of framing of charges, the Court is not required to make an inquiry into the veracity of the allegations levelled against the accused or look into their defence. Reliance is also placed on ***Chandralekha and others vs. State of Rajasthan and another 2013(1) R.C.R.(Criminal) 959.***

5. Learned counsel for respondent Nos.3 and 4 contends that the learned Courts below did not have the territorial jurisdiction to try the offence, as such they have correctly discharged respondent Nos.2 to 4-accused.

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that after the solemnisation of their marriage, the petitioner and respondent No.2 cohabited at village Fatehpur (Nawa Pind), Tehsil Patti, District Tarn Taran. However, the petitioner resides and works as the Vice Principal at Kapisthal Institute of Medical Sciences and



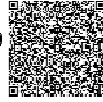
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Nursing, village Gharasi, Tehsil Thanesar, District Kurukshetra. Moreover, on 02.10.2013, respondent No.2 came to her college in Kurukshetra and threatened to murder the petitioner. A *panchayat* was also convened on 24.08.2014 in village Gharasi, owing to the matrimonial discord. The allegations levied on the respondent Nos.2 to 4-accused pertain to offences that are continuing in nature. Owing to the facts and circumstances of the case, this Court is bound to infer that the learned Courts below possessed the requisite jurisdiction to frame charges against the respondents.

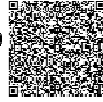
7. Under Section 239 of Cr.P.C., a remedy is provided to the accused to seek discharge from the alleged offence if he is found to be falsely involved out of malice and sufficient material is not available on record for the purpose of framing of charges. After completion of investigation, a report under Section 173 Cr.P.C is filed and the accused has a right to seek his discharge before the commencement of the trial by taking a recourse to the provisions of Section 227 and 239 Cr.P.C. If upon due consideration of the police report and all the documents attached with the final report under Section 173 Cr.P.C, the Sessions Court finds the charges levelled against the accused to be groundless, it shall discharge the accused by recording the reasons for doing so under Section 227 Cr.P.C. A similar recourse is provided under Section 239 Cr.P.C in trial of warrants case by Magistrates.

8. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of



the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a prima facie case exists depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature and judgmental law on this issue, it could be safely concluded that at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C, the learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record if taken at their face value disclose the existence of all the ingredients constituting the offence.

9. The discharge of the accused is only permissible when the case set up by the investigating agency in the final report filed before the trial Court under Section 173 Cr.P.C. has no basis or foundation. The Hon'ble Supreme Court has *in extenso* laid down the principles for the purpose of framing of charges in ***P. Vijayan Vs. State of Kerala (2010) SCC 398***. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in ***State through Deputy Superintendent of Police Vs. R. Soundirarasu etc. 2023 (2) RCR Criminal 206***, where a two Judge bench concluded that the primary



consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into. The discharge of the accused under Section 239 of Cr.P.C is permissible only when the case set up by the prosecution after the completion of investigation is found to be 'groundless'. Speaking through Justice J.B. Pardiwala, the following was opined:

*“71. In the case of **State by Karnataka Lokayukta, Police Station, Bengaluru v. MR. Hiremath, (2019) 7 SCC 515**, this Court observed and held in paragraph 25 as under:*

*“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of section 239 CrPC. 1973 The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In **State of TN. v. N. Suresh Rajan State of TN. v. N. Suresh Rajan, (2014) 11 SCC 709**, advertng to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)*

29. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge: though for conviction, the court has to come to the conclusion that the accused has committed the law does not permit a mini trial at this stage.”



72. *The ambit and scope of exercise of power under sections 239 and 240 of the CrPC, 1973 are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.*

73. *This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be "groundless".*

74. *The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever."*

10. Lastly, a two Judge bench of the Hon'ble Supreme Court in ***Rupali Devi vs. State of Uttar Pradesh (2019) 5 SCC 384***, dealt with the matter of territorial jurisdiction with respect to offence under Section 498-A IPC and speaking through Justice Ranjan Gogoi, made the following observations:



“14. *"Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.*

15. *The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences*



committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C., 1973 which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.”

11. In view of the discussion above, this Court is of the considered opinion that the learned Courts below have fallen into error by discharging respondent Nos.2 to 4-accused. Accordingly, the present petition is allowed and impugned orders dated 02.11.2016 (Annexure P-3) and 17.11.2015 (Annexure P-7) passed by the Courts below are hereby set aside and the same is remanded back to the learned trial Court for fresh consideration.

12. However, nothing observed hereinabove shall be construed to be expression of an opinion by this Court. The trial Court is directed to proceed with the case on its own merits, strictly in accordance with law.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

23.05.2024
manisha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No