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

+ **CRL.M.C. 539/2024 & CRL.M.A. 2132/2024**

DAVENDER AND OTHERSPetitioners

Through: Mr. Suraj Bhan / P-2 in
person.

versus

STATE(GNCTD) & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Bhawna Phogat, PS
Gandhi Nagar.
Mr. Bhupesh Saini, Mr.
Narendra Singh & Mr. R.
Kumar, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **22.08.2024**

CRL.M.A. 2133/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. By the present petition, the petitioner challenges the order dated 17.10.2023, passed by the learned Additional Sessions Judge ('ASJ'), pursuant to which the revision petition filed by the petitioner challenging the order dated 08.04.2022, passed by the learned Trial Court was dismissed on the ground of delay.

4. By order dated 08.04.2022, the learned Trial Court in case arising out of FIR No. 305/2016, had dismissed the application filed by the petitioners seeking discharge and had held that the allegations under Section 406 of the Indian Penal Code, 1860

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(‘IPC’) are made out against Petitioner No. 3. Other petitioners were discharged for offence under Section 406 of the IPC. The matter was put for framing of charges against Petitioner Nos. 1-2 and Petitioner Nos. 4-7 under Sections 498A/34 of the IPC and against Petitioner No. 3 for offences under Section 498A/34 of the IPC and under Section 406 of the IPC.

5. Formal charges thereafter were framed by order dated 03.12.2022.

6. The learned counsel for the petitioners submits that the petition challenging the orders dated 08.04.2022 and 03.12.2022 was filed on 07.03.2023. He submits that the same was filed within a period of limitation if calculated from the date of passing of the formal order on charge dated 03.12.2022. He submits that the petitioners were not sure and were confused whether to challenge the order dated 08.04.2022 since no formal charges were framed at that stage.

7. He submits that in such circumstances, the application filed under Section 5 of the Limitation Act, 1963 ought to have been allowed by the learned ASJ.

8. It is not disputed that the order dated 08.04.2022 is not an interlocutory order, and the challenge to the same was permissible in terms of Section 397 of the Code of Criminal Procedure, 1973 (‘CrPC’).

9. The contention raised by the petitioners that he was confused since the formal charges were not framed by the order dated 08.04.2022, is meritless. A detailed order was passed by the learned Trial Court on 08.04.2022, and the arguments advanced by the petitioners were noted. The learned Trial Court came to the conclusion that there is sufficient material on record to make a *prima facie* case against the accused persons.

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10. The FIR was registered on a complaint given by Respondent No. 2 alleging that the petitioners physically and mentally harassed, abused, and tortured her in connection with the demand for dowry. It is alleged that in her matrimonial home, Respondent No. 2 was constantly harassed physically and mentally by the petitioners for bringing less dowry. It is alleged that when Respondent No. 2 narrated about the said incidents to Petitioner No. 1, she was beaten by Petitioner No. 1. It is alleged that Respondent No. 2, while pregnant, was beaten by the petitioners which led to the premature delivery of the child. It is alleged that owing to the constant physical and mental abuse, a complaint was made to the ACP Crime Against Women Cell, Patparganj which later culminated into the present FIR.

11. The learned Trial Court held that the perusal of the record shows that the allegations under Section 406 of the IPC are made out only against one of the accused persons. Therefore, concededly pursuant to the said order, the charges under some of the sections as alleged were not framed against some of the petitioners.

12. The order dated 03.12.2022 is only a consequential order where formal charges were framed. The reason for which the said order was passed was contained in the order dated 08.04.2022, which was admittedly not challenged by the petitioners till 07.03.2023. The ground that the petitioners were confused whether to challenge the order dated 08.04.2022 is erroneous as rightly noted by the learned ASJ since ignorance of law is no excuse.

13. In any event, it is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether

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the ingredients constituting the alleged offence are *prima facie* made out against the accused persons (Ref: ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***) The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts emerging when taken at their face value, disclose the existence of ingredients constituting the offence. The Court only has to form an opinion based on the material placed before it that the accused might have committed the alleged offence. Though, for the purpose of conviction, the same has to be proved beyond reasonable doubt. In the present case, the learned Trial Court *vide* order dated 08.04.2022, noting that there existed sufficient material on record to make a *prima facie* case against the accused persons, proceeded to frame charges against Petitioner Nos. 1-7.

14. The learned Trial Court noted that contrary to the contention of Petitioner No. 2 that there was no material evidence against the accused persons, and that the allegations were vague in nature, it was noted that on a perusal of the chargesheet, it was apparent that there are specific dates on which the incidents of cruelty and dowry demands against Petitioner Nos. 1-7 was alleged by Respondent No. 2. It was noted that the averments made in the complaint were not general in nature.

15. It was noted that merely because it is contended that Petitioner No. 4 is married, and resides in her matrimonial home, does not suffice to observe that she never visited her parental home, or that the allegations against her were groundless. It was noted further that no ground for seeking discharge of Petitioner Nos. 5-6 had been averred. The learned Trial Court, noting that various averments regarding acts of cruelty had been alleged by Respondent No. 2, deemed it fit to give a chance to the prosecution to prove its case by leading evidence. The learned

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Trial Court further noted that the chargesheet was not barred by limitation, and the fact that the statements under Section 161 of the CrPC were recorded after 3 years, did not in any way, affect the *prima facie* view which the Court had to form regarding the culpability of the accused persons. In view of the aforesaid, the learned Trial Court proceeded to frame charges against Petitioner Nos. 1-7.

16. Moreover, it has been pointed out by the learned Additional Public Prosecutor for the State that the trial has since proceeded, and the complainant has also been examined and the matter is now listed for cross examination of the complainant.

17. It cannot be ignored that the power under Section 482 of the CrPC is discretionary in nature, and the same ought not to be exercised to impede trial. In the present case, trial has proceeded since framing of charges *vide* order dated 03.12.2022.

18. The petitioner is at liberty to take all arguments at the stage of final arguments before the learned Trial Court.

19. In view of the above, I find no merit in the present petition.

20. The petition is, therefore, dismissed.

21. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

AUGUST 22, 2024

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