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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 4792/2023 and CRL.M.A. 2450/2024

ASHUTOSH SHARMA & ORS.

.....Petitioners

Through: Mr.Maneesh Kumar, Advocate

versus

THE STA TE (GOVT. OF NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Nawal Kishore Jha, APP for State
with SI Akash Kumar

Mr.Soibal Gupta, Mr.Mani, Mr.Himanshu,
Mr.Suresh and Mr.Surendra, Advocates for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.07.2024

1. By way of present petition, the petitioners seek quashing of FIR No.518/2020 registered under Sections 498A/406/34 IPC and Section 3/4 of the Dowry Prohibition Act,1961 at P.S. Bhajanpura, Delhi on the ground that the action of the respondent No.2 in filing the said FIR is perverse and malafide and has been filed solely to harass the petitioners.

2. Learned counsel for the petitioners has raised a two-fold contention to seek quashing of the FIR. Firstly, he contends that the FIR has been filed as a counterblast to the divorce petition moved by the petitioner. He contends that the petitioner No.1 had filed a divorce petition being HMA 676/2019 seeking divorce from the respondent No.2 on grounds of cruelty on 27.07.2019. Soon after summons of the aforesaid divorce petition was served upon the respondent No.2, she, as a counterblast, she filed a

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complaint before CAW cell on 20.11.2019, upon which the FIR came to be registered on 09.09.2020. Secondly, he contends that the FIR is liable to be quashed solely on account of the delay in its registration. The said FIR came to be registered on 09.09.2020 whereas the respondent No.2 had stopped living together with the petitioner No.2 and No.3 since 16.07.2013 and with the petitioner No. 1 since 11.07.2016. Thus, there was an enormous delay in filing of the present FIR.

3. The present FIR is an outcome of a matrimonial dispute between the complainant/respondent No. 2 (wife) and petitioners wherein, petitioner No.1 is the husband and petitioner No.2 and petitioner No.3 are the father-in-law and the mother-in-law of the respondent No.2 respectively.

4. Learned APP for the State, on instructions, submits that the chargesheet has been filed in the present case. He further states that the petitioner No.1 has since expired on 03.12.2023.

5. Per contra, learned counsel for the respondent No.2 has vehemently opposed the present petition. He contends that the allegation of the FIR being a counter-blast does not hold any water as the divorce petition filed by the petitioner No.1 was itself a consequence of the respondent No.2 being unable to meet the dowry demand of a flat and car made by the petitioners. On the aspect of delay, learned counsel for the respondent No.2 submits that the offense under Section 498-A IPC is a continuing one, and the non-return of the *stridhan*, the original educational certificates and the personal laptop of the respondent No.2, which are in the custody of petitioners, constitutes a continuing act of cruelty towards the respondent No.2 and her family as their non-return has impacted and restricted her career prospects. Hence, he



submits that Section 468 of the CrPC is inapplicable to the present case and there is no delay in filing the present FIR.

6. I have heard the submissions of the learned counsel for the parties and gone through the records.

7. It is a settled position in law that the offence under Section 498-A IPC is a continuing one and every new act of cruelty results in a new starting point for limitation. The Supreme Court in the case of Arun Vyas v. Anita Vyas, reported as **(1999) 4 SCC 690** held as follows:-

“13. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation...”

Moreover, even if there is a delay beyond the limitation period, the same would not act as an absolute bar to taking cognizance and S. 473 CrPC gives power to the Court to extend the limitation period if it is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Supreme Court, while reiterating the abovementioned judgement, in the case of Ramesh v. State of T.N., reported as **(2005) 3 SCC 507** held as follows:-

8. ...The approach the court has to adopt in considering the question of limitation in regard to the matrimonial offences was highlighted by this Court in the case of Arun Vyas [(1999) 4 SCC 690 : 1999 SCC (Cri) 629] . While pointing out in effect that the two limbs of the enabling provision under Section 473 are independent, this Court observed thus: (SCC p. 696, para 14)

“14. ... The first limb confers power on every competent court to take cognizance of an offence



after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'. The interest of justice demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive."

8. Coming to the facts of the present case, petitioner No.1 got married to the respondent No. 2 according to Hindu rites and customs on 11.07.2013. One male child was born out of the wedlock on 18.05.2016. As per the allegations in the FIR, ever since the time of marriage, there have been persistent dowry demands by the petitioners No.2 and 3 and specific allegations have been levelled qua them. For instance, on 15.07.2013, the petitioners No. 3 had allegedly abused and bemoaned the respondent No.2



and her family members for not being able to give a flat to them at the time of marriage, while the petitioner No.2 had said that he had demanded a flat and car from the father of the respondent No.2 earlier as well but they had refused. After the ensuing arguments, the respondent No.2 and petitioner No.1 had started living separately from the next day, i.e. 16.07.2013. The *stridhan* and other jewelry, laptop and education certificates belonging to the respondent No.2 were left behind in the possession of the petitioners No.2 and 3. The FIR further demonstrates that leaving the matrimonial home did not lead the cession in the acts of cruelty, as there are multiple incidents mentioned in the complaints which are stated to have occurred even thereafter. The respondent No.2 was allegedly abused and beaten by the petitioners No.2 and 3 when the petitioner No.1 took her to meet them on 30.12.2013. Petitioner No.2 and 3 repeated their mentally and physical abusive behavior on 31.12.2024. The demand for a flat and car was reiterated by petitioner No.3 on 23.03.2015 and moreover, while the petitioner no.1 grabbed her throat and hit her with a glass bottle, the petitioner No.2 and 3 gave her beatings and police had to be called. The persistent demand for a car and flat and the act of beatings being given to the respondent No.2 on her refusal to meet this dowry demand once again occurred on 24.05.2016 after the birth of her child. The repeated acts of cruelty meted out to the respondent No.2 forced her to leave her matrimonial home on 25.06.2016 and she has been living with her parents since then. The petitioner No.1 had filed a divorce petition being HMA 676/2019 seeking divorce from the respondent No.2 on grounds of cruelty on 27.07.2019. The respondent No.2 made a complaint before CAW cell on 20.11.2019, upon which the impugned FIR came to be registered on



09.09.2020. Petitioner No.1 has expired on 03.12.2023. During the pendency of this case, the parties were referred to mediation, however the same were unsuccessful.

9. While the veracity of the allegations would have to be proved at the stage of trial and the FIR cannot be quashed at this stage. The contention regarding the complaint being barred by limitation is devoid of merit as the offence under Section 498-A is a continuing offence and on each new occasion on which the respondent No.2 was subject to cruelty, she had a new starting point of limitation. When the very act of leaving the matrimonial home was a culmination of her being subject to continued dowry demands and mental and physical harassment, the factum of her leaving the matrimonial home would not give any benefit to the petitioners. Admittedly, even the *stridhan* is still in the custody of the petitioners and the only dispute is with respect to the particulars. Furthermore, the Court can always take cognizance even after a delay, as Section 473 Cr.P.C. has to be construed liberally in favour of the wife who has been subject to cruelty, if in the facts and circumstances of the case it is necessary to do so in the interest of justice. On the aspect of the FIR being a counterblast, the same also does not appear to be correct considering that specific allegations of cruelty and dowry demand on multiple occasions have been levelled against the petitioner No.2 and 3.

10. Considering the facts and circumstances of the case and the fact that Section 498-A IPC is a continuing offence and that specific allegations of cruelty and dowry demand have been levelled against the petitioners No.2 and 3, this Court finds no ground to quash the FIR and the consequent proceedings arising therefrom.



11. The petition is disposed of alongwith the pending application in the above terms.

12. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and will not have a bearing on the further proceedings before the trial court.

MANOJ KUMAR OHRI, J

JULY 23, 2024

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