



2024:DHC:4004



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.05.2024

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CRL.M.C. 4693/2022 & CRL.M.A. 18994/2022

BABITA JAIN

..... Petitioner

Through: Mr.Sunny Vashisht, Ms.Perna
Sharma, Mr.Chinki Rani,
Mr.Deepak Kumar, Mr.Sandeep
Singh, Mr.Babru Bhan,
Mr.Manish Sharma, Advs.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Ms.Priyanka Dalal, APP with
SI Bhawna Phogat.
Mr.Yakchhandar Jain,
Ms.Sheena Sukhija, Advs.for
complainant.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 24.12.2021 passed by the learned Metropolitan Magistrate-Mahila Court, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court') in Case No.1933/2019, titled ***State v. Nem Chand Jain & Anr.***, which arose out of FIR No.301/2018 registered at Police Station: Gandhi Nagar, Shahdara, Delhi under Sections 323/354/354A/354B/506/509 of the Indian Penal Code, 1860 (in short, 'IPC').



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2. The above FIR was registered on the complaint of the sister-in-law of the petitioner, alleging therein that the complainant was married to the brother of the petitioner on 07.05.1998, and from the said wedlock, three children were born on 02.04.2001, 10.09.2002, and 17.10.2007. It was further alleged that while the father-in-law of the complainant resided on the ground floor of the matrimonial home of the complainant, the complainant resided on the first floor of the said house. However, whenever she was alone, the father-in-law used to take a bath in her bathroom at the first floor of the said house and whenever she used to complain about the same, he used filthy language and used to abuse her. There are other allegations also made against the father-in-law.

3. As far as the petitioner is concerned, the only allegation made is that on 19.10.2018, on the occasion of the Dusshera festival, the petitioner with her son had reached the house of the complainant and after some time of her arrival, she abetted *sic* instigated the husband of the complainant and the father-in-law of the complainant, whereafter the husband of the complainant started abusing and beating the complainant.

4. The police on the investigation had filed the charge-sheet, placing the petitioner in column no.12, stating that the allegations against the petitioner are only oral in nature and no other corroborative evidence has come on record.

5. In spite of the above state of affairs, the learned Trial Court, vide the Impugned Order dated 24.12.2021, has summoned the petitioner as an accused, by observing as under:



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“It is seen that the complainant has clearly mentioned in her complaint to SHO Gandhi Nagar that her husband abused and beat her and was abetted her sister-in-law. Similarly, in her statement u/s 164 CrPC, she has clearly stated that on 19.10.2018 her husband and sister-in-law had beaten her. Since the above two documents are substantial pieces of evidence, I deem it fit summon both the suspects in the present case.”

6. The learned counsel for the petitioner submits that the Impugned Order fails to appreciate that the complainant had been married since the year 1998, that is, almost 20 years before the alleged incident of 19.10.2018. The allegation made against the petitioner herein is also vague and merely states that the petitioner abetted *sic* instigated the husband of the complainant, however, it does not even describe in what manner and how the said abetment has been done. He submits that even the police, on investigation, did not find any corroborative material to the said allegations to proceed against the petitioner. He submits that the petitioner has been summoned on a wrong presumption that there is an allegation of the petitioner having beaten the complainant on the date of the alleged incident. He submits that the petitioner has been residing separately from the complainant ever since the marriage.

7. On the other hand, the learned counsel for the complainant submits that the complainant has made specific averments against the petitioner of her having abetted the husband of the complainant to beat her up. He submits that even though the police may file a Closure Report, the same does not denude the learned Trial Court to consider



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the evidence on record and summon the accused. In support, he places reliance on the judgment of the Supreme Court in ***Zunaid v. State of U.P. & Ors.*** 2023 SCC OnLine SC 1082. He also places reliance on the judgment of this Court in ***Bimal Bharthwal v. State through CBI***, Neutral Citation No.2012:DHC:2193.

8. I have considered the submissions made by the learned counsels for the parties.

9. Recently, the Supreme Court in ***Achin Gupta v. State of Haryana & Anr.***, 2024 SCC OnLine SC 759, while relying on the earlier judgment in ***Mahmood Ali & Ors. v. State of U.P. & Ors.***, 2023 SCC OnLine SC 950, has held that when an accused comes before the Court invoking the inherent powers under Section 482 of the Cr.P.C. for quashing of the criminal proceedings essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances, the Court owes a duty to look into the FIR with care and a little more closely and the Court, with due care and circumspection, has to read between the lines to assess that the contents of the FIR/complaint constitute the alleged Offence or not. It was held as under:

“29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr. P.C. as once there are allegations disclosing the commission of a cognizable offence then



whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of Bhajan Lal (supra). The category 7 as laid reads thus:—

“(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr. P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the



Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the



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heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

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35. In one of the recent pronouncements of this



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Court in Mahmood Ali v. State of U.P., 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”

10. In the present case, the FIR makes an extremely vague assertion against the petitioner, of her having abetted the husband of the complainant to beat her up. In what manner and how the said abetment has been done by her, has not even been alleged in the FIR and even in her statement under Section 164 of the Cr.P.C.. What were the actions/conduct/instigation of the petitioner which would amount to the alleged abetment, has also not been stated. What is important to note here is that the complainant had been married to the brother of the petitioner herein, since the year 1998, and in the entire history of



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20 years of marriage, the only incident that she alleges against the petitioner is of 19.10.2018. The police also could not find any evidence which corroborates the statement of the respondent no. 2 against the petitioner. The petitioner claims to have been living separately from the respondent no. 2 in her own matrimonial home.

11. It is not the case of the petitioner that the petitioner also gave her beatings, though the learned Trial Court in the Order dated 24.12.2021, on this premise has summoned the petitioner.

12. Applying the above principles of law, enunciated by the Supreme Court, to the facts of the present case, therefore, in my view, the Impugned Order dated 24.12.2021 of the learned Trial Court cannot be sustained. There was no material before the learned Trial Court to proceed against the petitioner in the above case.

13. While there can be no dispute with the legal propositions expounded by the learned counsel for the complainant, they are not applicable to the facts of the present case and cannot come to the aid of the complainant.

14. Accordingly, the Impugned Order dated 24.12.2021 is hereby set aside as against the petitioner herein.

15. The petition is allowed. The pending application is also disposed of being rendered infructuous.

16. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 16, 2024/Arya/AS

Click here to check corrigendum, if any