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

+ **CRL.M.C. 5256/2024 & CRL.M.A. 20079/2024**

KARAN BHATIA & ORS.Petitioners

Through: Ms. Sudershani Ray, Adv.
through V.C.

versus

STATE GOVT OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
ASI Praveen, PS Maurya
Enclave.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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11.07.2024

CRL.M.A. 20078/2024 (*exemption from filing original typed,
better/certified copies of the annexure with proper margin*)

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

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3. The present petition is filed seeking quashing of the FIR No. 164/2023 under Sections 498A/406/34 of the Indian Penal Code, 1860 (IPC), registered at Police Station Maurya Enclave.

4. The FIR was registered on a complaint given by the Respondent No. 2 who alleged cruelty. The Respondent No. 2 has also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act and the same is stated to be pending consideration.

5. The learned counsel for the petitioner submits that the marriage between the parties was not a proper, legal and genuine marriage. She submits that the parties had only exchanged

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garlands for the purpose of taking pictures at Arya Samaj Mandir. She submits that the allegations in regard to cruelty as defined in Section 498A of the IPC cannot be alleged against a person not married to the victim.

6. It is not disputed that the marriage certificate was in fact issued by the Arya Samaj Mandir. The parties have also obtained a certificate of registration of marriage under The Delhi (Compulsory Registration of Marriage) Order, 2014. As pleaded in the present petition, the parties also lived together in a rented house for some period of time and started living separately after differences arose between them.

7. The learned counsel for the petitioner seeks to rely upon certain WhatsApp messages which were allegedly exchanged between the parties in order to show that the marriage was conducted only for the purpose of obtaining the registration certificate.

8. On being asked, it is informed by the learned Additional Public Prosecutor for the State that the chargesheet in the present case has already been filed and the matter is pending consideration for arguments on charge.

9. Arguments raised by the learned counsel for the petitioner are in the nature of defence, which in the opinion of this Court ought to be pleaded before the learned Trial Court.

10. It is not disputed that the chargesheet has already been filed in the present case after proper investigation by the police. Once it is admitted that the certificate of registration has been issued for the marriage between the parties in terms of the applicable provisions, it cannot be presumed at this stage that the marriage between the parties was not genuine and the provisions of Section 498A/406 of the IPC will not apply.



11. A similar issue was considered by the Hon'ble Apex Court in ***Reema Aggarwal v. Anupam & Ors. : (2004) 3 SCC 199*** and ***A. Subash Babu v. State of A.P. & Anr. : (2011) 7 SCC 616***.

12. In ***Reema Aggarwal v. Anupam & Ors., (supra)***, Hon'ble Apex Court considered whether the learned trial court had rightly dropped the charge under Section 498A of the IPC on the ground that the complainant was not the legally wedded wife of the accused. The Hon'ble Apex Court interpreted the terms 'husband' and 'woman' under Section 498A of the IPC and disagreed with the findings of the trial court:

“...It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions.”

13. Further, the Court observed that whether the offences are made out is a matter of trial.

14. The Hon'ble Apex Court in ***A. Subash Babu v. State of A.P. & Anr. : 2011 (7) SCC 616***, had considered the maintainability of a complaint under Section 498A of the IPC on the ground that the marriage was void and the complainant was not the legally wedded wife. The Hon'ble Apex Court refused to quash the proceedings initiated under Section 498A of the IPC on such technicalities and made the following observations:

“19. ...The judgment of the High Court quashing the proceedings initiated by the learned Magistrate for



commission of offence punishable under Section 498A is tainted with serious legal infirmities and is founded on a legal construction which is wrong.”

15. In view of the above, no case is made out for quashing of the FIR. It is the admitted position of the petitioner that he had married the respondent and cohabited with her for a certain period, thereby establishing a *prima facie* marital relationship. The petitioner’s contention is limited to the ground that the marriage was not conducted in accordance with the rituals and hence, is invalid in law. However, in view of the settled law, the proceedings under Section 498A of the IPC cannot be quashed merely on technical grounds such as legitimacy of marriage.

16. In view of the above, whether the marriage is legitimate or not and whether the offence is made out under Section 498A of the IPC would be a matter of trial. No ground is made out for quashing of the FIR at this stage.

17. In view of the above, the present petition is dismissed.

AMIT MAHAJAN, J

JULY 11, 2024

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