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

Reserved on : 15.12.2023
% **Pronounced on : 04.04.2024**

\+ **W.P.(CRL) 3072/2019 AND CRL.M.A. 32267/2023**

P. ROYCHAUDHURI ..... Petitioner

Through: Mr. Rakesh Tiku, Sr. Advocate with Mr. Avinash and Mr. Monu Kumar, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Ms. Rupali Bandhopadhya, ASC for the State with SI Vijay Pal Singh, PS CWC Nanak Puri.
Mr. S. N. Pandey, Advocate for R-2 (*through video conferencing*).

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present writ petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C. has been filed by the petitioner with the following prayers:

> "*i) Quash/Cancel the Impugned Order on charge dated 28.01.2019 including the FIR No.33/2013 PS CWC Nanakpura, as well as the charge sheet and/or all subsequent proceedings and taking cognizance of order dated 10.02.2015 :and*
> *ii) Pass any other or further orders as this Hon'ble court may deem fit and proper.*"

2. In brief, the factual matrix of the present case is that the complainant (respondent no.2 herein) lodged a complaint on 12.07.2012, with the CAW Cell against her husband (petitioner herein) and her mother-in-law. It is alleged that the petitioner began pursuing the complainant in the year 2007 and eventually convinced the complainant to marry the petitioner and finally they got married on 25.01.2010. It is further alleged that on the very day of wedding, the petitioner shouted at the complainant over a minor issue.

3. It is further alleged that in February 2010, mother-in-law of the complainant/respondent no.2 took her jewellery under the guise of safekeeping, and when the complainant objected, the petitioner slapped her and instructed her not to argue with his mother. Later, during a visit to Calcutta, mother-in-law of the complainant, supported by the petitioner, took ₹20,000 from her without explaining the purpose. It is further alleged that the petitioner frequently created scenes regarding the complainant's job transfers between the period of February and May 2010, visiting her in Mumbai and physically assaulting her multiple times, restricting her movements, and demanding her full attention. It is further alleged that the petitioner feigned illness for sympathy, disrupted her work, and insisted on accompanying her on official trips.

4. It is also alleged that although dowry was not directly demanded, the complainant claims that she was pressurized to give money after the marriage, totalling approximately ₹1.00 lacs on various occasions. It is additionally alleged that her mother-in-law regularly demanded money whenever the complainant visited Calcutta

or when her mother-in-law visited Delhi, and if she couldn't comply, they ridiculed her. Besides this, the petitioner insisted the complainant to pay for the rented accommodation and on 11-12.01.2011, they argued over her official trip, and in February 2011, they quarrelled again because the petitioner wanted to accompany the complainant on trip, which she refused.

5. In addition, the petitioner and mother-in-law made casteist remarks and demanded ₹50,000 from the complainant, verbally abused her when she refused. It is also alleged that on 15.02.2011, the petitioner twisted her arm and threatened to make her life miserable until she gave him the money. The petitioner and her mother-in-law also pressurized her to add the petitioner's name as a joint owner of the flat, threatened her when she said she would do so later. It is further alleged that in March 2011, when the petitioner's mother visited Delhi, they again pushed the issue of property registration. On 05.03.2011, the complainant left for Lucknow, and upon her return on 08.03.2011, she found that the petitioner had already moved out with some of his belongings without any explanation. It is alleged that since then, the petitioner has been verbally abusing her over the phone and filing false complaints against her.

6. I have heard the learned senior counsel for the petitioner, learned ASC for the State assisted by the learned counsel for the complainant/respondent no.2 and perused the records of this case.

7. It was submitted by the learned senior counsel for the petitioner that there is absolutely no evidence against the petitioner justifying the imposition of charges against him under Section 498A IPC. It was

further submitted that the accusations against the petitioner lack specificity, as they do not fulfil the essential ingredients regarding the alleged offence. It was further submitted that this court possesses the authority to promptly stop any misuse or manipulation of legal procedures and the learned Trial Court has simply proceeded on the basis that any specifics are required to be considered at the stage of the trial.

8. It was further submitted by the learned senior counsel for the petitioner that the parties shifted to East Delhi after marriage and started living together from May 2010 and stayed together till 18.03.2011 and were living separately since then. Thereafter, respondent no.2 filed two police complaints dated 17.06.2011 and 13.07.2011 to the SHO, Madhu Vihar Police Station making various allegations against the petitioner but did not allege any dowry harassment. It was further submitted that after seeing no merits in the complaints of respondent no.2, FIR was not registered, however, before such formal rejection of the complaint, the respondent no.2 filed another complaint dated 20.06.2012 with CAW Nanakpura, contents of which were repetitive in nature of the previous complaints but was an embellished complaint. It was further submitted that accusations were also made about dowry demand and not returning the alleged stridhan though unsubstantiated which the learned Trial Court rightly declined in framing charges under Section 406 IPC.

9. It was urged by the learned senior counsel for the petitioner that subsequent to the filing of the initial two police complaints by the

complainant, the petitioner was compelled to file a divorce petition on 18.07.2011, under Section 13(1)(ia) of the Hindu Marriage Act before the learned Family Court in Karkadooma Courts, citing cruelty. It was further urged that the competent Family Court has dismissed the account provided by respondent No.2 and has granted divorce decree in favour of the petitioner against respondent No.2, stating cruelty by respondent No.2 towards the petitioner as ground. In support of his contentions, learned senior counsel for the petitioner has relied upon the following judgments :-

- ***Sanjeev Kumar & Others Vs. State & Another,*** **Crl. M.C. No. 264553/ 2005.**
- ***State of HP Vs. Niku Ram & Another*** **(1995) 6 SCC 219.**
- ***Rajiv Thapar vs. Madan Lal Kapoor,*** **(2013) 3 SCC 330.**
- ***State of Orissa Vs. Debendra Nath Padhi*****, 2005 (1) SCC 568.**

10. On the other hand, learned ASC for the State ably assisted by the learned counsel for the complainant/respondent no.2 has supported the impugned order and submitted that all the contentions raised on behalf of the petitioner are matter of trial. It was further submitted by the learned ASC that the petitioner will have plenty of chances to question the truthfulness of the complainant/respondent No.2 and her supporting witnesses by cross-examining them during the trial, however, at this early stage, it is not possible to assess the credibility of the prosecution witnesses who might be called during the trial. It

was further submitted that there are enough reasons to move forward with the case against the petitioner, and the charge cannot be considered wrong in any reasonable way. It was further submitted that the criteria for determining guilt or innocence will be applied before making a final decision and the same should not be used at this point while deciding whether to formally charge the accused.

11. Learned counsel for the complainant/respondent no.2 has relied upon the following judgments :-

- ***Ashughosh Kumar Nirmal Vs. CBI 2021 (2) JCC 993 (Delhi).***
- ***Shri Aishwarya Bindal Vs The State, Govt. of N.C.T. of Delhi & Anr.***
- ***State Vs. Mahesh Chand 2017 (4) JCC 2437.***
- ***State Vs. Anjum Khanna & Anr. 2017 (4) JCC 2346.***
- ***State of Bihar Vs. Ramesh Singh 1978 SCR (1) 257- (1977) 4 SCC 39.***
- ***Sheroraj Singh Ahlawat Vs. State of U.P. (2003) 11 SCC 476***
- ***Ravindra V. State of MP (2015) 4 SCC 491.***
- ***Superintendent and Remembrance of Legal Affairs West Bengal Vs. Anil Kumar Bhunja & Ors. (1979) 4 SCC 274.***
- ***Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4.***
- ***Sajjan Kumar Vs. CBI 2010 (9) SCC 368.***
- ***State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568.***
- ***Neha Monga and Ors. Vs. State & Ors. 2012 X AD (Delhi) 338.***

12. In the instant case, to ensure a fair decision, it is important to include the relevant paragraph of the impugned order of framing of charge. The same is reproduced as under:

> *"Regarding offence u/s 498A IPC, complainant has levelled clear allegations that accused was pressing the complainant to give Rs 50,000/- to his mother and for the said demand, he also twisted her hand in 15,02.2011. Complainant has also alleged that accused used to insist that his name must be included as a joint owner of the flat at Mumbai. She also alleged that in March 2011, accused again raised the issue of property registration and threatened that if the registration is not done immediately, he will leave her. Finally, in the same month accused deserted complainant despite her requests.*
>
> *Ld. Senior. Counsel had argued that complainant had given three complaints before the present complaint. The Director of Prosecution had given an opinion that no cognizable offence was made out on the first three complaints. Further the protection officer had reported in the D.V case that there was no dowry harassment. It is argued that the parties were, living separately since March 2011 and therefore there was no question of there being any fresh input on 20.06.2012 (the date of fourth complaint) after the first three complaints. It is argued that the present FIR has been registered on the basis of an embellished complaint.*
>
> *It is trite that the opinion of the prosecution branch is not binding on the police. The additional DCP has given detailed reasons for not agreeing with the opinion given by the DPP. A bare perusal of the first complaint dated 17.06.2011 shows that complainant had alleged that she was being harassed and tortured for refusing to include the name of accused in her property. That being so, it was not proper to close the complaint at the enquiry stage itself.*
>
> *Further the complaint dated 13.07.2013 shows that the complainant had referred to her previous complaint and the emphasis of this complaint was alleged threatening calls and harassment by accused post March 2011. It is possible that there are some embellishments in the last complaint but the same is a matter of trial.*

In so far as the domestic incident report is concerned, the protection officer is not equipped with investigative powers.

Therefore at this stage, it cannot be said that the allegations against the accused are groundless.

There are sufficient grounds to frame charge for the ofence u/s 498A IPC against accused Pabitra Roi Chaudhary."

13. The charge framed by the Ld. Trial Court against the petitioner on 17.07.2019 reads as follows:

"I, Shivani Chauhan, MM-01, New Delhi, do hereby charge you accused Pabitra Rai Choudhary S/o Late P C Rai Choudhary as under:-

That after the date of marriage i.e. 25.01.2010 of complainant Smt. Rita Raj with you accused Pabitra Rai Choudhary and at any time during the subsistence of marriage at the matrimonial house and at all other places as mentioned in complaint, within jurisdiction of PS Nanakpura you subjected the complainant with cruelty in-connection with demand of dowry and thereby committed an offence punishable U/s 498-A IPC and within my cognizance.

And I hereby direct that you be tried by this court for the said offences."

14. It would also be profitable to look into the relevant provisions of Section 498A IPC, under which the petitioner has been charged, for just and fair decision of the present case. The same reads as follows:

"Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

> *(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
>
> *(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

According to Explanation (a), cruelty must be severe enough to potentially lead a woman to contemplate suicide or cause significant harm or danger to her life, body, or health.

Explanation (b) of Section 498-A IPC states that cruelty involves harassing a woman with the intent to pressure her or her relatives into meeting unlawful demands for property or valuable assets, or as a result of their failure to meet such demands. Not every instance of harassment constitutes cruelty under this explanation. The harassment must be specifically aimed at coercing the woman or her relatives to comply with unlawful demands. Simply making demands for property, etc., without harassment, does not qualify as cruelty. Only when harassment is proven to have been carried out to coerce a woman into meeting such demands then it does qualify as cruelty and become punishable under this section.

15. The Hon'ble Supreme Court has noted over a period of time that for harassment to qualify as cruelty under Explanation (b) of Section 498-A IPC, it must be connected to the demand for dowry. If this connection is absent, the case would not fall under the purview of

Section 498-A IPC. Different High Court's in their catena of judgments have stated that not all forms of harassment or cruelty fall under Section 498-A of the Indian Penal Code. Specifically, physical abuse and harassment must be aimed at compelling the wife to either contemplate suicide or comply with unlawful demands. If the beating inflicted on the wife by her husband and his relatives stemmed from domestic disagreements rather than a demand for dowry, the offence under Section 498-A of the Indian Penal Code would not apply.

16. From the bare reading of Section 498-A IPC and the aforementioned discussion, it is evident that for Explanation (b) of Section 498-A to apply, there must be a demand. If there is no demand and the cruelty is inflicted solely to torment the woman without any connection to the demand, then such cruelty would not fall under Explanation (b) of Section 498-A. However, it may still constitute cruelty under the Hindu Marriage Act, 1955, as clarified by the Supreme Court in the case of ***Shobha Rani v. Madhukar Reddy*** **(AIR 1998 SC 121)**. In this case, it was stated that cruelty under Section 498-A of the IPC is distinct from cruelty under the Hindu Marriage Act, 1955.

17. It is established legal principle that during the stage of framing of charges, the court possesses the authority to examine the evidence for the limited purpose of determining whether a *prima facie* case against the accused has been established. When the evidence presented before the court raises strong suspicions against the accused that remain unexplained, it is justified for the court to proceed with framing the

charges. However, this stage does not involve a detailed examination of the evidence as in a trial, nor does it require weighing the evidence to determine the guilt of the accused. Instead, if the evidence suggests that the commission of the offense by the accused is a plausible possibility, the court may proceed with framing the charges.

18. Putting it differently, even if the court believes that the accused may have committed the offence, it can still frame charges, although for a conviction, it must be proven that the accused did commit the offence. During the framing of charges, the probative value of the evidence cannot be thoroughly examined; rather, the evidence presented by the prosecution must be accepted as true at this preliminary stage. The truthfulness and impact of the evidence that the prosecutor intends to present should not be scrutinized extensively, nor should the potential defense of the accused be given significant consideration.

19. It is not necessary for a judge at this stage to meticulously assess whether the facts, if proven, would contradict the innocence of the accused. The standard of test and judgment applied at the stage of framing charges is not the same as that used for determining guilt or innocence. Rather, if there exist a strong suspicion that leads the court to believe there are grounds to presume that the accused committed an offence, the court cannot dismiss the case for lack of sufficient grounds to proceed against the accused.

20. In deciding whether to frame charges in a criminal case, the court

does not employ the same standard and test as it does for determining guilt or innocence in the final judgment. What needs to be considered is whether there is a strong suspicion that could lead the court to believe there are grounds to presume that the accused committed an offence. This idea is backed by legal rulings from both the Hon'ble Supreme Court and the High Court's in ***"Union of India vs Prafulla Kumar",*** **AIR 1979 Supreme Court 366,** ***"State of Maharashtra and others vs Som Nath Thapa and other"*** **JT 1996 (4) SC 615,** ***"State of Bihar vs Ramesh Singh",*** **AIR 1997 SC 2018: (1997 CRI LJ 1606),** ***"Umar Amdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau"*** **JT 1999 (5) SC 394,** ***"Kalu Mal Gupta vs. State"*** **2000 I AD Delhi 107.**

21. In the instant case, the FIR was registered on 05.03.2013. After reviewing the FIR, it is evident that it lacks necessary details to establish the essential aspects of the alleged offence committed by the petitioner. From a bare perusal of the FIR, it appears that there are some temperamental issues and matrimonial discords between the petitioner and the complainant/respondent no.2 which, in my opinion, can maximum be the ground for civil cases seeking remedy in the matrimonial cases and not the ground for cruelty, which the petitioner has been charged with. It is pertinent to mention here that learned Family Court has considered this ground and has already granted divorce as submitted by the learned senior counsel for the petitioner.

22. Every criminal proceeding demands meticulous attention and prudence, recognizing its profound implications on the accused's life.

A judicious adjudication of criminal matters necessitates equilibrium, wherein the judiciary is tasked with impartially weighing the interests of both the complainant and the defendant. This endeavour is particularly intricate when crucial definitions within statutory provisions are lacking. However, historically, courts have discharged this responsibility by drawing upon legal precedents and considering the unique factual circumstances of each case. Likewise, in the present case, it is imperative to strike a balance between the accused's right to a fair trial and the complainant's entitlement to due process, both during the framing of charges and throughout the adjudicatory process.

23. Undoubtedly, each case must be evaluated against the backdrop of its distinctive facts and circumstances, encompassing not only the particulars of the incident but also the individuals involved therein. It is indisputable that in situations where the allegations outlined in the FIR or complaint, even when taken at face value and embraced in their entirety, fail to *prima facie* establish the purported offence or establish a case against the accused, or where the criminal proceedings exhibit clear signs of malice or are instigated with malevolent intent, motivated by personal vendetta or animosity, the proceedings are susceptible to annulment.

24. The Hon'ble Supreme Court in case of ***Sajjan Kumar v. CBI*** **(2010) 9 SCC 368** has deliberated on the jurisdiction of courts concerning the framing of charges and discharge, emphasizing that the determination of a prima facie case hinges upon the specific facts and

circumstances of each case. The pertinent principles outlined in the aforementioned decision are as follows:

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie cases would depend upon the facts of each case.*
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
> *(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
> *(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
> *(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
> *(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the*

trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal…"

25. The Hon'ble Apex Court in the case of ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey* (2022) 12 SCC 657**, has observed the law regarding framing of charge as under:

> *"27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice..."*

26. Hence, the cornerstone for deliberating on the formulation of charges focuses on ascertaining the presence of sufficient evidence on record to establish, at first glance, the commission of an offence. Establishing a *"prima facie"* case entails having adequate material or evidence that, when examined on its face, raises a reasonable suspicion that the accused could have perpetrated the purported offence.

27. Keeping in view the discussions mentioned hereinabove, in my opinion, the statements provided are overly ambiguous and lacking in specificity. A single isolated incident, unless significant, and in the

absence of tangible evidence indicating a demand of dowry that could result in cruelty towards the complainant/respondent no.2, may not be adequate to charge the petitioner with committing cruelty under Section 498A IPC. Therefore, no charge under Section 498A IPC is found to be made out against the petitioner and the continuation of the present criminal proceedings against the petitioner would be an abuse of the process of law and this is a fit case for setting aside the impugned order on charge dated 28.01.2019 by virtue of which the charge under Section 498A IPC was framed against the petitioner, the same is accordingly set aside. The petitioner stands discharged for the offence for which he was charged.

28. The present petition along with pending applications, if any, stands disposed of.

29. The copy of this order be sent to the Trial Court for information and further compliance.

RAJNISH BHATNAGAR, J

APRIL 04, 2024/ib