

(2013) 11 DEL CK 0403

In the Delhi High Court

Case No : Criminal M.C. 2946 of 2013 and Criminal M.A. 15833 of 2013

Aman Sahi

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 397, 482
Penal Code, 1860 (IPC) — Section 307, 34, 406, 498, 498A

Citation : (2013) 11 DEL CK 0403

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : Rajat Aneja and Ms. Swati Gupta, for the Appellant; Navin K. Jha, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—This is a petition u/s. 482 Cr.P.C. for setting aside the order dated 18.04.2013 passed by the learned Additional Sessions Judge whereby the order dated 02.02.2011 passed by learned Metropolitan Magistrate was modified and direction was given for framing additional charges against the petitioner u/s. 307/506 IPC. The factual matrix of the case is that on 17.02.2012 the petitioner got married with respondent no. 2 in accordance with Hindu rites and rituals. A complaint was made by respondent no. 2 with Crime Against Women Cell (CAW), Pitampura Delhi on the basis of which FIR No. 214/06 u/s. 498/406/34 IPC was registered with P.S. Mangolpuri, Delhi against petitioner and his family members. The charge-sheet was submitted before Metropolitan Magistrate, Delhi. After hearing arguments on charge, except for the petitioner, all the other accused persons were discharged and order for framing of charge for offences u/s. 498A IPC qua the petitioner was passed. Respondent no. 1/State filed a criminal revision 60/12 u/s. 397 of the Cr.P.C. before the Additional Sessions Judge, Rohini Court, Delhi. After hearing learned counsel for the parties, the revision petition was disposed of and the order passed by learned Metropolitan Magistrate was upheld. However, the learned Additional Sessions Judge directed framing of

additional charges against the petitioner u/s. 307/506 IPC besides the charge already framed against him u/s. 498A IPC by the learned Metropolitan Magistrate. This part of the order has been assailed by the petitioners in this petition.

2. It was submitted that the order of framing additional charge by the learned Additional Sessions Judge is wholly illegal, without jurisdiction and is unsustainable in the eyes of law inasmuch as the petitioner neither inflicted any injury nor made any attempt to cause any physical harm to respondent no. 2. Even the complaint filed by respondent no. 2 before the CAW Cell on the basis of which FIR was registered did not disclose any act of the petitioner against respondent no. 2 which could make him liable to be prosecuted u/s. 307/506 IPC. Moreover the State had also not prayed for framing of the charge u/s. 307/506 IPC. The revision was filed only against that part of the order vide which the accused persons other than the petitioner were discharged. In the absence of any ground urged by the revisionist, the Court committed a grave illegality by suo moto directing the framing of the charge against the petitioner u/s. 307/506 IPC, that too, in the absence of any material in the charge-sheet with respect to the said allegations, as such, it was submitted that the part of the order whereby additional charges were ordered to be framed against the petitioner be set aside.

3. I have heard Mr. Rajat Aneja, Advocate for the petitioner and Mr. Navin Kumar Jha, learned APP for the State and have perused the record.

4. Learned counsel for the petitioner has reiterated the averments made in the petition for submitting that the Trial Court had discharged the other accused and had ordered for framing of charge qua the petitioner only u/s. 498A IPC. Feeling aggrieved by this order, State preferred a revision, but that was only qua the discharge of other accused persons. It was not urged in the revision petition that any additional charge is liable to be framed against the husband. Moreover there was no independent evidence collected by the prosecution to substantiate the charge u/s. 307/506 IPC. No complaint was made by the complainant nor was she medically examined in regard to the incident. That being so, even otherwise the learned Additional Sessions Judge was not justified in ordering the framing of additional charges qua the petitioner.

5. Per contra, learned APP for the State submitted that an additional charge can be framed against the accused at any stage of the proceedings and there is no infirmity in the order which calls for interference.

6. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record. Section 216 of the Cr.P.C., 1973 provides for alterations or additions of any charge at any time before the judgment is pronounced. Power of the Court to add any charge at any stage of the proceedings is not even challenged by learned counsel for the petitioner. However his submissions are confined to the effect that the revision filed by the State was only qua the other accused persons who were discharged

by the learned Trial Court and State was not seeking addition of any charge qua the petitioner. Further that no independent investigation was made in regard to the allegations made by the complainant regarding section 307/506 IPC. A perusal of FIR recorded on the basis of complaint made by the complainant reveals that besides other allegations she had specifically stated that on 10.06.2004, her husband had tried to strangulate her at the instigation of his parents and sister. She had barely saved her life. At other places it was alleged that her husband manhandled her parents and threatened them by saying "I will kill you and set all your three daughters on fire". Her father called the police and with the help of police she took her daughter and went back to her parents house. By referring to these allegations, learned Additional Sessions Judge directed framing of the charge u/s. 307/506 IPC against the petitioner. Prima facie the specific allegations attracted Section 307 and 506 IPC. Although the Investigating Officer of the case chose to file the charge sheet only u/s. 498A/406 IPC but Court has ample power to frame charge for any other offence which are borne out from the material on record. Moreover, even if the learned Metropolitan Magistrate did not frame specific charge u/s. 307 & 506 IPC and the State also did not request for framing of these charges, the Court has scrutinised the material available on record and if, prima facie, the allegations attracts the provision of any other offence, then it is duty bound to frame charge under those sections. There were specific allegations made by the complainant which could not be brushed aside. The mere fact that no independent evidence was collected by the Investigating Officer in regard to these facts was not sufficient not to frame charges under these Sections because at the stage of framing charge, only a prima facie view is required to be taken and not that ultimately the allegations will lead to conviction or not. That being so, since the Court had ample power u/s. 216 of the Code of Criminal procedure to add any charge, therefore, if the learned Additional Sessions Judge modified the order of the learned Trial Court for framing charge u/s. 307 and 506 IPC, no infirmity can be found in the same. That being so, the petition is devoid of merit and the same is dismissed.