

(2000) 03 DEL CK 0066
In the Delhi High Court
Case No : Criminal R. No. 84/97

Amitabh Adhar and Another

APPELLANT

Vs

NCT of Delhi and Another

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 34, 498

Citation : (2000) CriLJ 4772 : (2000) 85 DLT 415 : (2000) 2 DMC 55 : (2000) 56 DRJ 220 : (2001) 1 RCR(Criminal) 365

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. P.P. Malhotra and Mr. S.K. Dubey, for the Appellant; Mr. M.S. Bhutala and Mr. W.N. Gujral, for the Respondent

Judgement

M.S.A. Siddiqui, J.—This revision is directed against the order dated 5.10.1996 passed by the Metropolitan Magistrate, New Delhi directing framing the impugned charges under Sections 498A/406/506/509/34 IPC against the petitioners.

2. Briefly stated the facts giving rise to this revision are that the complainant Ms. Bharti Saran was married to the accused Sudhanshu Saran on 2nd June, 1994. The married life of Sudhanshu Saran and Ms. Bharti Saran, according to the prosecution, lacked connubial felicity and was marked by constant bickerings and quarrels. The cause for this discord being the perverted sexual behavior of the accused Sudhanshu Saran and the demand of dowry. It is the prosecution case that Sudhanshu Saran was constantly subjecting the complainant Ms. Bharti Saran to corporeal intransigence. The petitioner No.1 is the step brother and the petitioner No. 2 Ms. Bandana Vajpaye is the step sister of the accused Sudhanshu Saran. On 28.1.1995, the complainant Ms. Bharti Saran lodged a written report at the Police Station Tilak Marg against her husband including the petitioners. Investigation pursuant thereto culminated in submission of a charge sheet under Sections 498-A/406/506/509/34 IPC against the accused persons.

By the order dated 5.10.1996, the Metropolitan Magistrate framed the impugned charges against the petitioners. Aggrieved thereby the petitioners have come up in revision before this court.

3. Assailing validity of the impugned order learned counsel for the petitioners have strenuously urged that the materials collected by the prosecuting agency do not constitute any offence against the petitioner and the learned Magistrate committed a manifest illegality in framing the impugned charges against them. It is an admitted position that the complainant Ms. Bharti Saran was married to Sudhanshu Saran on 2.6.1994 and the petitioner No.1 is the step brother and petitioner No. 2 is the step sister of the co-accused Sudhanshu. It is also undisputed that the petitioners are residing separately from the co-accused Sudhanshu Saran. It is well settled that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to marshal the evidence and record a finding that the materials collected by the prosecuting agency are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defense evidence, if any, cannot show that the accused committed a particular offence. In such case there would be no sufficient ground for proceeding with the trial. *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , State of Bihar Vs. Ramesh Singh, , Union of India (UOI) Vs. Prafulla Kumar Samal and Another, and Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, .*

4. Bearing in mind the said principles, I proceed to examine the facts of the case on the scale of law with a view to finding out whether the materials produced by the prosecuting agency make out any prima facie offence against the petitioners. In her FIR, the complainant Ms. Bharti Saran has made following allegations against the petitioner No. 2 Ms. Bandana Vajpaye-

".....That on so many occasions his step sister Ms. Bandana Vajpaye r/o 35, Hanuman Road, New Delhi had visited the home and also tortured and beaten me on the dowry issue and also taunted me that I would be thrown out and her brother could be remarriage and on this even my husband tried to kill me."

5. She has also made the following allegations against the petitioner No.1:-

"That the step-brother of my husband Mr. Amitabh Adhar r/o 35 Hanuman Road, New Delhi had also threatened me to finish me in the event of not leaving the house."

6. Insofar as the offence u/s 406-IPC is concerned, there is absolutely no allegation in the FIR against the petitioners. In her case diary statement, she has stated about entrustment of some dowry articles to the petitioner No. 2. She has

not specified the dowry articles alleged to have been entrusted to the petitioner No. 2. Admittedly, the petitioner No. 2 had been living separately from the complainant Ms. Bharti and it does not appear to be probable that she would have entrusted any of her dowry articles to the petitioner No. 2. That apart, on 16.7.1994, i.e., before lodging the FIR, the complainant Ms. Bharti had intimated to the police that she had taken away her dowry articles at the time of leaving her matrimonial home. (vide D.D. entry No. 27-A dated 16.7.1994). This circumstance clearly negatives the theory of commission of an offence u/s 406 I.P.C. by the petitioners. The averments made in the FIR and in the case diary statement of the complainant against the petitioners also do not satisfy the essential ingredients of the offences punishable under Sections 506/509 IPC. The threats alleged to have been given to the complainant Ms. Bharti by the petitioners do not fall within the definition of criminal intimidation inasmuch as the complainant has nowhere stated that the threats given by the petitioners caused an alarm to her. It is well settled that mere threat is no offence. Similarly, the complainant has nowhere stated either in her FIR or in the case diary statement that the petitioners, intending to insult her modesty, uttered any word or made any sound or gesture.

7. As regards the offence u/s 498-A IPC, the FIR is conspicuous by the absence of any allegation of demand of dowry by the Petitioners No.1. That being so the charge u/s 498-A IPC against the petitioner No.1 was also groundless.

8. The complainant Ms. Bharti Saran had stated in her FIR that on so many occasions she was tortured and beaten up by the petitioner No. 2 in connection with the demand of dowry. Learned counsel for the petitioners has invited my attention to various reports made by the complainant Ms. Bharti Saran and her parents at the Police Station Tilak Marg. The earliest report is dated 16.7.1994 lodged by the complainant's father Mr. J.K. Batra at the Police Station, Tilak Marg intimating the police about receipt of a distress call from the complaint. He had also intimated about his proposed visit to the complainant's house and sought police protection (Vide DD entry No.12-A dated 16.7.1994). On the same day at about 10.40 p.m., the complainant Ms. Bharti Saran also reported at the Police Station Tilak Marg about her leaving the matrimonial home and taking away her entire dowry articles (Vide DD entry No. 27-A dated 16.7.1994). The third report is dated 22.9.1994 made by the complainant Ms. Bharti at the Police Station Tilak Marg intimating the police about her return to the matrimonial home. She had also sought police protection against any possible assault on her by her husband. (Vide D.D. entry No.7-A dated 22.9.1994). The aforesaid reports are conspicuous by absence of any allegations, whatsoever, against the petitioners. The petitioners have also relied upon entry No.33 dated 7.10.1994 of the Daily Diary of the Police Station, Tilak Marg. The said entry was made by the Inspector L.P. Anand Sagar and it contains the following facts:-

(a) While the Inspector was on patrolling duty, he received an information about commission of an affray near the house No. 30, Todarmal Road. On his arrival at

the spot he found ASI Satpal, the accused Sudhanshu Saran, and the complainant Ms. Bharti Saran along with her mother Smt. Prabha Batra.

(b) The complainant complained to the Inspector that while she along with her mother was at the second floor of the said house, her husband (Sudhanshu Saran) accompanied by his friends came there and asked her to open doors of the house; that on her refusal, he broke open the doors and belaboured her causing an injury on her forehead.

(c) The complainant refused to undergo medical examination for the said injury.

(d) The complainant gave a statement before the Inspector levelling charges of maltreatment and harassment by her husband.

9. The said DD entry does not contain any allegations against the petitioners regarding the alleged harassment of the complainant by the petitioners in connection with the demand of dowry.

10. On 11.1.1995, the complainant Ms. Bharti Saran had also sent a written complaint to the DCP (C) Women Cell Nanak Pura (Annexure A) levelling charges against her husband. The said report is again conspicuous by the absence of any allegation against the petitioners. A combined reading of the said reports along with the FIR would go to show that the charge u/s 498-A leveled against the petitioner No. 2 was also groundless. It is well known that an estranged wife will go to any extent to rope in as many relations of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage. I am, Therefore, of the view that the materials collected by the prosecuting agency do not give rise to any grave suspicion against the petitioners in respect of the offences alleged to have been committed by them under Sections 498-A/406/506/509/34 IPC. The learned Metropolitan Magistrate has committed a manifest illegality in framing the impugned charges against the petitioners. Consequently, the petitioners are entitled to be discharged.

11. In the result revision is allowed and the impugned order to the extent it affects the petitioners, is set aside. The petitioners' bail bonds are discharged. Before I part with this order, I would like to make it clear that nothing stated herein shall be construed as an expression of opinion on merits of the case of the prosecution against the remaining accused.