

(2019) 04 DEL CK 0229

In the Delhi High Court

Case No : Criminal Writ Petition No. 743 Of 2019, Criminal Miscellaneous
Application No. 5412 Of 2019

Ankur Narang

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 498A

Code Of Criminal Procedure, 1973 — Section 181(4), 468, 473

Citation : (2019) 04 DEL CK 0229

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Hitender Kapur, Rajesh Mahajan, Jyoti Babbar, Kamal Gupta

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By this petition the petitioner seeks quashing of FIR No. 38/2019 under Sections 498A/406/34 IPC registered at PS Paschim Vihar on the complaint of respondent No.2.

2. The three grounds taken by the petitioner seeking quashing of FIR in question are; first is lack of territorial jurisdiction contending that no offence has taken place in Delhi and thus Police Station has no jurisdiction to investigate and the Trial Court has no jurisdiction to try the offence; secondly, that the FIR was not lodged within the period of limitation and thirdly that on the face of the FIR the allegations are not made out.

3. As regards the first issue of territorial jurisdiction is concerned, the three Judge Bench of Supreme Court in the decision titled as 'Rupali Devi Vs. State of Uttar Pradesh and Ors.' CRL.A. No. 71/2012 decided on 9th April, 2019 has held that even in cases where there is no allegation of harassment or demand of dowry at the parental place of the complainant who comes to take refuge at her

parental place, she can lodge a FIR in the said Police Station, which can be investigated by the officer of the said Police Station and the Trial Court having jurisdiction on the said Police Station would have jurisdiction to try the said offence.

4. In the decision reported as (2011) 12 SCC 434 Kushal Kumar Gupta Vs. Mala Gupta, the Supreme Court held as under:

"4. The only point for consideration in this case is whether the learned Magistrate at Patiala had jurisdiction to entertain the complaint and to issue summons on the basis thereof.

5. Learned counsel for the petitioners contended that both the learned Additional Sessions Judge, Patiala, and the High Court misconstrued the provisions of Section 181(4) Cr.P.C. in holding that the complaint was maintainable, as no part of the cause of action had arisen within the jurisdiction of the Courts at Patiala. It was urged that the respondent/complainant had received back all her articles and personal effects and nothing remained to be handed over to the complainant at Patiala so as to give rise to a cause of action within the jurisdiction of the Courts at Patiala. The learned counsel urged that the complaint was wholly motivated and without basis and was liable to be quashed.

6. On the other hand, learned counsel for the respondent, Mala Gupta, submitted that the complaint itself contains a categorical statement that the dowry articles were to be returned at Patiala Court, thus attracting the provisions of Section 181(4) Cr.P.C. It was also submitted that at the stage of taking cognizance, the Magistrate was only required to see whether there was any material in the complaint to proceed against the accused and the learned Magistrate had rightly observed that documents produced on behalf of the accused would be considered at the time of trial".

5. Further case of the complainant in the FIR itself is that her costly items, jewellery, etc. were taken on the ground that they were to be kept in locker in Delhi so that it could be safe, thus the jewellery and costly items were retained in Delhi. Marriage being performed at Delhi, the entrustment of articles also took place at Delhi. Hence in view of Section 181(4) of the Cr.P.C. the Court at Delhi would have jurisdiction to try the offence. Thus, this Court finds no merit in the first argument raised.

6. As regards the second ground of limitation is concerned, learned counsel for the petitioner contends that the FIR was lodged beyond the period of limitation from the date of offence. A perusal of the FIR in question reveals that the parties were married on 16th May, 2010 whereafter the course of harassment took place besides entrustment. The complaint was lodged by the respondent No.2 with the Assistant Commissioner of Police, Crime Against Women Cell, Pitampura on 25th July, 2017. The incidents mentioned in the complaint even relate to July, 2014, September 2014, October 2014 and thereafter as well. Thus, it cannot be said that the complaint was lodged beyond the period of limitation.

7. Section 468 Cr.P.C. reads as under:

"468. Bar to taking cognizance after lapse of the period of limitation.---.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

8. Thus, the period of limitation as per the Code of Criminal Procedure is not applicable for lodging of the complaint but for taking cognizance of the offence by the Court and it is trite law that while taking cognizance even if there is delay in matrimonial matters the Court has to see whether it is in the interest of justice to condone the delay in taking the cognizance.

9. Para 5 of judgment of this Court in W.P.(Crl.) 2325/2017 Anthony Jose Vs. State of NCT of Delhi & Ors. reads as under:

"5. In (1993) 3 SCC 4 Vanka Radhamanohari Vs. Vanka Venkata Reddy the Supreme Court dealing with the bar of Section 468 Cr.P.C.in relation to the matrimonial offences held as under:

"7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of State of Punjab v. Sarwan Singh [(1981) 3 SCC 34 : 1981 SCC (Cri) 625 : AIR 1981 SC 1054]. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such,

courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice".

10. The third contention of learned counsel for the petitioner is that on the face of the complaint the allegations under Section 498A IPC and 406 IPC are not made out. Respondent No.2 has given a detailed complaint, entire facts narrated wherein are not being mentioned. However, it would be pertinent to mention few facts which itself disclose commission of cognizable offence. The complainant has alleged that the accused person used to taunt her for the kind of clothes given to them at the function and at the wedding and that the same were not as per their demand and status. She has also alleged that in the year 2012 after the birth of the daughter accused No.1 purchased a flat in Zirakhpur near Chandigarh for a sum of Rs. 50 lakhs for which she gave Rs. 4 lakhs and the accused also forced her to get a sum of Rs. 5 lakhs from her parents and when she showed her inability to do so she was taunted by saying "SHADI SE AB TAK, TERE MAA BAAP NE KIA HE KYA HAI. NA TO KUTCH DIA HAI". There are allegations of entrustment of costly items including jewellery. Hence, prima facie, this Court finds that the allegations constituting the offences punishable under Section 498A and 406 IPC are clearly made out.

11. Learned counsel for the petitioner submits that flat at Zirakhpur is in the joint name and hence it cannot be said that the husband has taken the money. The issue is not that the complainant gave money to the petitioner for purchasing the flat but the fact that a demand of Rs. 5 lakh was made for purchasing the flat and when not fulfilled she was taunted and harassed.

12. Learned counsel for the petitioner has referred to the decision of the Supreme Court in Preeti Gupta and Anr. Vs. State of Jharkhand & Anr. 2010 (7) SCC 667 wherein the Supreme Court held:

"30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from Section 498-A of the Penal Code which reads as under:

"498-A. 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."

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases."

13. No doubt, Hon'ble Supreme Court has issued caution that matrimonial litigations are rapidly increasing in our country, however at the stage of quashing of the FIR principles laid down by the Supreme Court in case of State of Haryana Vs. Bhajan Lal AIR 1992 SC 604 etc have to be applied and as in the present case, on the face of allegations cognizable offences are made out, the FIR in question cannot be quashed.

14. Petition and application are dismissed.