

(2002) 09 DEL CK 0127

In the Delhi High Court

Case No : CRLR. 304/01

Braham Singh Tyagi and Others

APPELLANT

Vs

State of Delhi and Another

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 397

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 307, 34, 498A

Citation : (2002) 100 DLT 718 : (2003) 1 DMC 128

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : K.B. Andlay and M.L. Yadav, for the Appellant; Sunil Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Mahmood Ali Khan, J.—This criminal revision is filed u/s 397 of the Cr.P.C. against the order of an Additional Sessions Judge framing charges u/s 498A and Section 307 read with Section 34 IPC against the petitioner accused.

2. Briefly stated the facts are that the complainant Ms. Seema Tyagi lodged a report with the police on 17.10.1998 that she was married to Sunil Tyagi on 12.12.1998 in accordance with Hindu rites and thereafter went to live with her husband and other members of his family, the petitioners herein, and that the husband and his other relatives had been causing her mental and physical torture in order to coerce her and her relatives to give more dowry and money. It was alleged by her that her brother was satisfying their demands but still her harassment by the petitioners continued unabated although she had sent for money from her parents to satisfy them. On her complaint a case u/s 498A IPC was registered. On the same day she made a supplementary statement in which she reaffirmed her earlier complaint and contended that on 2.10.1998 the petitioners had tried to set her on fire by pouring kerosene oil on her but she

escaped as the electricity light went off and the petitioner could not find a matchbox to light the fire. She further alleged that she escaped with her clothes doused in kerosene and met with a woman named Vimla on the way who took her to her house where her clothes were changed and thereafter she went to her mother's home in village Khajuri. It was alleged that she was also examined in Guru Teg Bahadur Hospital on 3.10.1998 and that she wanted to add that incident also in her complaint. Upon this statement and on the basis of her report made to the police on 3.10.1998, the MLC collected during investigation, the charge-sheet u/s 498A/307 read with Section 34 IPC and Sections 3 & 4 of the Dowry Prohibition Act was filed against the petitioners. The Additional Sessions Judge heard the petitioners and rejected the argument of the petitioner that no case for framing of the charge u/s 307 IPC was made out for the trial of the petitioners. He found sufficient evidence to frame charges u/s 498A and 307 read with Section 34 IPC observing that the value of the evidence would be appraised at the appropriate stage of trial.

3. The petitioners are aggrieved and have filed this revision petition challenging the order. Counsel for the petitioners has challenged the framing of the charge u/s 307 read with Section 34 IPC in the proceedings. He drew attention to the statement of the complaint which was initially recorded on 17.10.1998 in which there was no mention of any incident of attempt to murder the complainant by burning her which allegedly took place on 2.10.1998. He also drew attention to the statement which was made on 3.10.1998 in which the complainant had alleged that the petitioners after catching hold of her had poured kerosene oil over her with the intention of killing her but in the meantime the electricity went off and they tried to search for the matchbox and the complainant got an opportunity to escape and when she was proceeding towards Bhajanpura bus stand to take a bus for her mother's home she met a woman named Vimla on the way who took her to her own house and got her kerosene oil doused clothes changed and thereafter escorted her to the bus stop from where she went to her village Khajuri. Counsel also referred to the MLC prepared in the Guru Teg Bahadur hospital on 3.10.1998 and contended that although the complainant did not allege in her statement dated 3.10.1998 that the fire was lighted but the doctor found superficial burns of dark brown colour on her nipples etc which according to him are not corroborated by the statement of the complainant. The counsel however did not deny that on 17.10.1998 itself supplementary statement of the complainant was recorded in which she has mentioned about the incident of attempt to murder her by the petitioner on 2.10.1998 by dousing her with kerosene oil but failing to set her ablaze since the electricity went off and in the meantime before the matchbox could be found by the petitioner she escaped. In the MLC prepared on 3.10.1998 also there was allegation that kerosene oil was poured over her on 2.10.1998 at 5.30 AM by the petitioner etc.

4. At the stage of framing of the charge u/s 228 the court has only to ensure that the accusations made against the accused is not frivolous and there is material on record to proceed against the accused. If upon consideration of the material

placed on record the court is of the opinion that there is a reasonable probability of chance of the accused being found guilty the charge is to be framed. The court at this stage can sift and weigh the evidence for the charges of finding whether prima facie case has been made out. If, however, the court comes to the conclusion that there was no sufficient ground for proceeding against the accused the accused could be discharged u/s 227 of the Act. A grave suspicion that the accused has committed the offence is enough for framing the charges against the accused persons at this stage. Counsel for the petitioner himself has referred to the statement of the complainant dated 17.10.1998, 3.10.1998 and the MLC of the complainant dated 3.10.1998 and has also not denied that on 17.10.1998 the complainant had made a supplementary statement in which she had implicated the petitioner to the commission of the offence which prima-facie make out a case u/s 307 IPC. The question whether the allegations of the complainant made in her statement dated 3.10.1998 or 17.10.1998 are true or not are matter of evidence. The MLC dated 3.10.1998 had corroborated her statement that there was some incident of an attempt upon her life by the petitioner. It is true that in the MLC the doctor had found some superficial burn marks on some part of the body when the complainant in her statement dated 3.10.1998 had not stated that she suffered those burns in the incident which had taken place on 2.10.1998. But the evidence which has been collected at this stage cannot be sifted and scrutinized minutely and meticulously judged in order to arrive a conclusion whether what she had alleged is true or false. Critical appraisal of the evidence at this stage of framing of the charge is not permissible.

5. The contention of the counsel for the petitioner that there had been some reconciliation in the dispute between the parties in pursuance to which some money had been paid to the complainant is no ground for not framing of a charge of the offence which on the basis of material placed on record is prima facie made out.

For the reasons stated above there is no merit in the petition. It is dismissed.