
(2009) 02 DEL CK 0271

In the Delhi High Court

Case No : Criminal M.C. No. 2823 of 2007 and Criminal M.A. No. 10029 of 2007

Manu Nischal and Others

APPELLANT

Vs

State of NCT and Another

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 328, 34, 354, 377, 405

Citation : (2009) 02 DEL CK 0271

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Chetan Sharma, Sushil Kr. Pandey and ASI Raj Kumar, Party-in-Person, for the Appellant; O.P. Saxena, APP, for the Respondent

Judgement

Aruna Suresh, J.—Petitioners have invoked the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) seeking quashing of the entire proceedings in FIR No. 472/2003, Police Station Paschim Vihar wherein chargesheet dated 28.7.2004 has been filed in the court of learned MM, Rohini.

2. Briefly narrated the case of the prosecution is that complainant/(respondent No. 2 herein) Mrs.Sudha was married to petitioner No. 1 Manu Nischal on 19.11.2000 at Delhi. Petitioner No. 1 was settled in USA since before he married the complainant and after about three months of the marriage he went back to USA leaving behind the complainant with his other family members, i.e. petitioners No. 2 to 4. However, after few days of the departure of her husband complainant left her matrimonial home and started living with her parents. Petitioner No. 1 visited India in March/April as he had to attend marriage of his nephew (son of his sister). Complainant also joined his company in her matrimonial home. Petitioner No. 1 returned back to USA on 15.7.2001 leaving behind the complainant. Soon after he left for USA, complainant again came back to her parents' house. She gave birth to a female child on 19.10.2001. After

going back to USA, petitioner No. 1 remained in contact with the complainant till July 2003 on telephone as well through e-mail. Meanwhile on 17.7.2003 Petitioner No. 1 filed a suit in the court of Pennsylvania, USA seeking decree of dissolution of marriage between him and the complainant. On 25.8.2003 complainant filed a complaint in Police Station Paschim Vihar which culminated into registration of FIR No. 472/2003 dated 25.8.2003 against all the petitioners for offences under Sections 498A/406/328/354/34 of Indian Penal Code (hereinafter referred to as IPC).

3. In the complaint it was alleged that immediately after marriage petitioner No. 1 demanded Rs. 20 lacs from her for settling in USA. Her husband had started physically torturing her before he left for USA. When his demands were not fulfilled, his sisters; petitioners No. 3 and 4 also used to mentally and physically harass her. Soon after petitioner No. 1 left for USA, she was thrown out of the house by her sisters-in-law and she came back to her parents' house. It is also alleged in the complaint that soon after her marriage petitioner No. 3, Vinod had taken all her ornaments except a pair of Karas. She came back to her matrimonial home to reside with her husband; Manu Nischal when he revisited India to attend the marriage of his nephew. After he left for USA, she was again thrown out of the house and she came back to her parents' house.

4. In the complaint it was also alleged that petitioner No. 2, Om Prakash Nischal, the brother in law (Jeth) of the complainant allegedly called her to her matrimonial home on next day of Janmashtmi to chart out the programme of her visit to USA. There she was made to take some cold drink forcibly and thereafter he removed her Karas which she was wearing. Om Prakash allegedly hugged her and indulged into indecent activities with her. She ran away from the house. After reaching her parents' home she became unconscious. She was removed to the hospital. Complainant suspected, rather, believed that petitioner No. 2 Om Prakash and petitioner Nos. 3 and 4, Vinod and Shobha intended to kill her.

5. After the investigation was complete chargesheet was filed in the court. The trial court vide its detailed order dated 13.5.2005 was pleased to discharge the petitioners for offence u/s 328 IPC and remanded back the case to the court of learned MM to proceed against the petitioners under Sections 498A/406/354/34 IPC. A revision petition was filed against this order by the complainant in this court. The said revision petition was dismissed on 26.9.2005.

6. A divorce petition filed by petitioner No. 1 in Pennsylvania was duly contested by the complainant. Petitioner No. 1 was successful in obtaining a decree for divorce in his favour against the complainant on 28.1.2005.

7. Petitioner No. 1 admittedly is not appearing before the trial court. Even in this petition he has not put in appearance despite the fact that he was directed to be present in person vide order dated 21.8.2008. He again did not appear in the Court on 15.10.2008 and on 6.11.2008. It was noted on 6.11.2008 that petitioner No. 1 still was not appearing before the trial court, where charges are

to be framed, resulting into delay in the trial of the case. On the request of the learned Counsel for the petitioners one more opportunity was granted to ensure the presence of petitioner No. 1. He failed to appear in the court on 11.12.2008. On that date a communication was filed by petitioners No. 2 to 4 stating that despite their information to petitioner No. 1 through registered post he had failed to appear in the court. In view of his conduct petitioners No. 2 to 4 made it clear to the court that since petitioner No. 1 has failed to appear in the Court and was not responding to the communication they were no longer representing him and the Court should proceed with the petition as having been filed by petitioners No. 2 to 4. Under these circumstances, it is made clear that this order in no manner would be taken as order passed by this Court in a petition filed by Manu Nischal, petitioner No. 1 seeking quashing of the proceedings in the impugned FIR.

8. Mr. Chetan Sharma, learned senior Counsel for the petitioners has argued that allegations against the petitioners in the FIR are vague as no details of the alleged incidents have been given, complainant has not given the date of the alleged demand of car by the petitioners, complainant was a divorcee when she married petitioner No. 1 in November 2000, she of her own accord left her matrimonial home soon after petitioner No. 1 went to USA where he was already residing prior to his marriage with the complainant, the FIR does not contain any allegations of cruelty for demand for dowry for the period from 19.11.2000 when she married to petitioner No. 1 till June 2001, the complaint has been filed with malafide intentions to wreck vengeance against the petitioners after petitioner No. 1 filed divorce petition against her in Pennsylvania, USA.

9. It is further argued by the learned Counsel for the petitioners that prima facie no offence u/s 406 IPC is made out against the petitioners as there are no allegations of entrustment of dowry articles, nor alleged articles were demanded back by the complainant.

10. It is further argued that the alleged incident of obscenity as was done by petitioner Om Prakash on next day of Janmashtmi, cannot be said to be an act of cruelty within the meaning of Section 498A IPC and the allegations in the FIR are false being not specific. There are no allegations of cruelty in the FIR and taking holistic view of the circumstances as narrated in the FIR prima facie no offence under Sections 498A/406/354/34 IPC is made out against any of the petitioners. He has placed reliance on Jatinder Kumar and others Vs. State (Delhi Admn.) Delhi,

11. All these allegations have been refuted by Mr. O.P. Saxena, learned APP for the State. He has argued that as per the contents of the FIR and the evidence available on the record prima facie an offence under Sections 498A/406/354/34 IPC is made out against all the petitioners as there are specific allegations of demand for dowry, tortures and beatings against the petitioners. There are also specific allegations that petitioners had thrown out the complainant from her matrimonial home soon after her husband left for USA on both the occasions and that petitioner No. 1 did not even care to find out the welfare of the minor

daughter, rather obtained divorce from the complainant at Pennsylvania. He has also highlighted the conduct of petitioner No. 1, husband of the complainant, who is living in USA and is avoiding his arrest and has not joined the investigation of the case at any stage.

12. To make out an offence u/s 406 IPC complainant has to show that she had entrusted her property with the petitioners which they misused or refused to return her back when demanded. The allegations of entrustment are only against petitioner No. 3 Vinod and petitioner No. 2 Om Prakash. Allegations of entrustment against Vinod is that soon after her marriage Vinod took in her possession the jewellery belonging to the complainant except two karas. Allegations of entrustment against Om Prakash are that when she had gone to her matrimonial home on the next day of Janmashtmi to chart out her programme for going to USA to join the company of her husband, Om Prakash removed her Karas which she was wearing after she was made to drink something forcibly by her sister in law Shoba i.e. petitioner No. 4. Averments in the complaint therefore are vague in nature with no details of the jewellery articles allegedly taken into possession by petitioner No. 3 Vinod. The date or month of the incident when the alleged ornaments were taken into possession is also not disclosed. It is not the case of the complainant that she had entrusted her jewellery with the petitioner No. 3 Vinod to keep it in safe custody to be returned back to her as and when demanded. At the time of alleged incident complainant's husband was living with her at Delhi, probably she never made such complaint to her husband against her sister-in-law; Vinod for having taken away her jewellery. Had she informed her husband about the conduct of her sister-in-law Vinod the same would have found mention in the complaint itself. No complaint was lodged by the complainant at that time against petitioner No. 3 Vinod. In the absence of any specific details of the jewellery items allegedly taken away by petitioner No. 3 and for want of particulars of the alleged incident prima facie it would not be appropriate to say that complainant had entrusted her jewellery with petitioner No. 3 Vinod. Alleged taking away of the jewellery belonging to the complainant by petitioner No. 3 does not constitute an offence for criminal breach of trust as ingredients of entrustment defined in Section 405 IPC are not made out. It is not disputed that there was no entrustment of dowry articles by the complainant with any of the petitioners. There are no allegations of any dishonest misappropriation of the jewellery by any of the petitioners.

13. Petitioner No. 3 Om Prakash is alleged to have removed the karas from the hands of the complainant when she went to her matrimonial home on his invitation to make out a proper programme for her visit to USA. This allegation in itself also does not constitute any entrustment of jewellery i.e. pair of karas by the complainant with petitioner No. 2 Om Prakash. There are no allegations of dishonest misappropriation of her karas by any of the petitioners.

14. Significantly when petitioners sought anticipatory bail and the petition came up for hearing on 1.9.2003 the father of the complainant was also present in the

Court and he made a statement to the Court that till that day no demand for return of the dowry articles was ever made from the petitioners. While granting anticipatory bail vide order dated 1.9.2003 the Court had observed that under the circumstances when no demand for return back of the dowry articles was made there was no question of petitioners having refused to return back the articles.

15. It is pertinent to note that complainant was a divorcee and her marriage with Manu Nischal petitioner No. 1 was a love marriage as stated by her in the complaint. Under these circumstances I find that ingredients of criminal breach of trust are completely missing in this complaint.

16. Petitioners have been chargesheeted for offence u/s 498A IPC as well. To make out an offence u/s 498A IPC complainant has not only to allege demand for dowry but also that she was subjected to cruelty by her husband or relatives of the husband for non-fulfillment of their unlawful demand. Cruelty as defined in Section 498A IPC means any willful 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 mentally or physically to the woman or 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. Following are the ingredients in this Section:

- a. The woman must be married;
- b. She must be subjected to cruelty and harassment and such cruelty or harassment must have been shown either by husband of the woman or relative of her husband;
- c. Such harassment is with a view to coerce her or her relative to meet any unlawful demand of any property or valuable security or on account of failure of her or her relative to meet such demand.

17. Accusations of demand of dowry against petitioners No. 2 to 4 as made out from the complaint are:

- a. A car was demanded by petitioners No. 2 to 4.
- b. She was harassed for non-fulfilment of the demand.
- c. Complainant was severely and mercilessly beaten and thrown out of the house after her husband had left for USA.
- d. She was taunted and beaten whenever she visited her in-laws house in the absence of her husband.
- e. She came back to her matrimonial home in March 2001 when her husband came to attend the marriage of his nephew and after he left for USA she was again thrown out of the house.

f. On next day of Janmashtmi her Karas were removed and her brother-in-law (jeth) tried to molest her.

g. She was forced to take cold drink and thereafter she became unconscious and was taken to the hospital where she was medically treated.

18. The alleged accusations as narrated in the FIR at the best can be considered as a demand. The alleged demand is not coupled with cruelty so as to attract provisions of Section 498A IPC. No specific date, place or occasion has been indicated of the alleged demand or cruelty and half-hearted attempt has been made when complainant has alleged that she was given beatings by petitioners No. 2 to 4 and was thrown out of the house. As regards the allegations of intoxicating her with a view to kill her as pointed out above, the court has discharged all the petitioners of offence u/s 328 IPC. Allegations against all the petitioners are elusive, vague and are not illustrative of any specific act on the part of any of the petitioners so as to prima facie implicate them for an offence u/s 498A IPC.

19. There is no dispute that complainant was earlier married to one Hitender Shokeen on 24.9.1993 and after few months of her marriage she separated from him and obtained divorce by mutual consent. Complainant had also filed a private complaint under Sections 406/498A/377 IPC against Hitender Shokeen on the basis of which FIR No. 278/94 under Sections 498A/406 IPC was registered against her erstwhile husband. Hitender Shokeen has been acquitted of the offences by the trial court vide detailed order dated 4.1.2008. In the said complaint also complainant alleged that her father had given her a car make Maruti 800 in her marriage but, she was being harassed and tortured by Hitender Shokeen and his family members for bringing, car make Maruti 1000. Complainant had also levelled allegations that her jewellery was taken away. There were allegations of her erstwhile husband demanding Rs. 1 lac through his sister. It seems that complainant is in the habit of involving her husbands and their family members with similar nature of allegations for criminal breach of trust and torture for demand for dowry. She did not file any complaint against any of the petitioners; after she was thrown out of the house; even when she was again thrown out of the house in July 2001. This complaint was filed in August 2003 only after petitioner No. 1 had filed a petition seeking divorce in the court of Pennsylvania, USA, presumably as a counterblast to wreck vengeance against her husband and his family members.

20. Mere vague statement of the complainant that she was subjected to cruelty for demand for dowry and that her jewellery (unexplained) except her Karas were taken away by her sister-in-law Vinod and her Karas were subsequently removed by her brother-in-law Om Prakash; without any specific allegations, prima facie no offence is made out against petitioners No. 2 to 4 for framing of charges under Sections 498A/406/354 IPC.

21. Cruelty for the purposes of Section 498A IPC means any willful conduct which

is likely to cause grave injury or danger to life. In this case there are no allegations of such a nature which might indicate willful conduct on the part of the petitioners to instigate her to commit suicide or the nature of cruelty was such that it was a danger to her life or caused grave injury to her limb or health whether mental or physical. She never received any physical injury on her person. There is nothing on the record to suggest that she suffered mental cruelty at the hands of the petitioners. As per the complaint, admittedly the marriage between the complainant; Sudha and petitioner No. 1 Manu Nischal was a love marriage. Under the circumstances when she was already a divorcee and probably sought divorce because she wanted to marry petitioner No. 1 Manu Nischal and in view of the nature of evidence collected by the investigating officer during the investigation of the case it is doubtful if any dowry articles were given to the complainant in her marriage.

22. As already discussed no list of dowry articles movable or immovable and jewellery has been provided by the complainant either to the police or to the court. Under these circumstances an allegation of molestation against the petitioner No. 2 also are of no consequence, are trivial in nature to frame him in an offence u/s 354 IPC. In the absence of the same prima facie I do not find sufficient evidence on the record to proceed against the petitioners No. 2 to 4 for offences u/s 406/498A/354 IPC.

23. For the foregoing reasons, petition is partly allowed. FIR No. 472/2003 and the proceedings of the Court in the case, only qua the petitioners No. 2 to 4 are quashed. The petitioners No. 2 to 4 are accordingly discharged. Petition qua petitioner No. 1 Manu Nischal is dismissed for non prosecution. The trial court shall proceed as against petitioner No. 1 Manu Nischal in accordance with law.

24. Attested copy of the order be sent to the trial court through special messenger.