

(2006) 05 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14495-M of 2004

Mukta Devi

APPELLANT

Vs

Prasandi and Others

RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A, 506

Citation : (2006) 3 RCR(Criminal) 212

Hon'ble Judges : H.S. Bedi, Acting C.J.

Bench : Single Bench

Advocate : Navneet Chhokar, for the Appellant;

Final Decision : Allowed

Judgement

H.S. Bedi, A.C.J.—Mukta Devi is the complainant in FIR No. 229 dated 20.9.2000 under Sections 498A, 406, 506 IPC, Police Station Chandhut, District Faridabad. As per the allegations made in the petition, she had been married with Pritam son of Sahmal on 24.6.1993 in Palwal, District Faridabad. She thereafter lodged the aforesaid FIR on the basis of which a charge was framed against the accused vide order dated 16.1.2003 under Sections 498A, 406, 506 IPC by Judicial Magistrate Ist Class, Palwal. Aggrieved by the aforesaid matter, the accused filed a revision petition before the Additional Sessions Judge, Faridabad, who set-aside the order of framing of charge against all the accused-respondents except Pritam and thereby discharged the accused vide order dated 15.5.2003. However, against Pritam, he partly accepted the revision u/s 506 IPC only. This order has been impugned in these proceedings by the complainant, Mukta Devi.

2. A bare reading of the order of the learned Additional Sessions Judge would reveal that he had examined the record as if he would determine the issue after leading evidence and in a trial. He has also weighed the correctness of the allegations made in the FIR and the statements u/s 161 Cr. P.C. to arrive at a conclusion that no case had been made out against the accused. To my mind, this procedure cannot be applied at the time of framing of the charge, as has

been held by the Hon''ble Supreme Court in State of Maharashtra v. Salman Salim Khan and another, 2004(1) RCR(Criminal) 314 wherein it has been observed as under :-

12. We are of the opinion that though it is open to a High Court entertaining a petition u/s 482 of the Code to quash charges framed by the trial Court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charges, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the apex Court most of which were with reference to appeals arising out of convictions, we think of the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable u/s 304, Part II, IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time we are also in agreement with the arguments of learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable u/s 304 Part II, IPC.

13. Therefore, we think it appropriate that the findings in regard to the sufficiency or otherwise of the material to frame a charge punishable u/s 304, Part II, IPC of both the courts below should be set aside and it should be left to be decided by the Court trying the offence to alter or modify any such charge at an appropriate stage based material produced by way of evidence.

This petition is accordingly allowed and the order dated 15.5.2003 passed by the Additional Sessions Judge is quashed.

Petition allowed.