
(2010) 12 DEL CK 0349

In the Delhi High Court

Case No : Criminal M.C. No. 287 of 2010 and Criminal M.A. 1053 of 2010

Priyank Mehta and Others

APPELLANT

Vs

State (NCT) of Delhi and Another

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 181(4), 482
Penal Code, 1860 (IPC) — Section 406, 498(A)

Citation : (2012) 1 JCC 718

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Aman Lekhi and Monika Arora, for the Appellant; Fizani Husain, APP for Respondent 1 and Vishal Gosain, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Bharihoke, J.—Priyank Mehta and others, the Petitioners herein have filed this petition u/s 482 Code of Criminal Procedure seeking an order quashing FIR No. 16 dated 13th January, 2010 registered against them at police station Malviya Nagar, New Delhi on the complaint of Respondent No. 2 as also the proceedings consequent thereupon.

2. Briefly stated, facts relevant for this petition are that Respondent No. 2 Abha Mehta was married to Petitioner No. 1 at Jaipur on 11th November, 2003. Petitioners No. 2 and 3 are the parents and Petitioners No. 4 and 5 are brother and sister of Petitioner No. 1.

3. Respondent No. 2 filed a complaint on 07th September, 2009 in CAW Cell, South District, New Delhi being complaint No. 186/CAW Cell followed by one other complaint dated 04.01.2010 addressed to ACP, CAW Cell, police station Vasant Vihar alleging commission of the offences punishable under Sections 498A & 406 IPC against the Petitioners. On the basis of the complaint sent to ACP, CAW Cell, FIR No. 16 was registered at P.S. Malviya Nagar on 13th January, 2010.

4. Feeling aggrieved by the registration of FIR against them, Petitioners have filed the instant petition mainly on the ground that the FIR is nothing but abuse of process of law; no offence u/s 498A and 406 IPC is prima facie made out and that no part of the cause of action arose within the jurisdiction of courts at Delhi.

5. Learned Counsel for the Petitioners has submitted that the FIR filed against the Petitioners under Sections 498A/406 IPC is liable to be quashed for the reason that ex facie, the FIR does not disclose the commission of either of the offences. Dilating on the argument, learned Counsel drew my attention to the initial complaint dated 07th September, 2009 submitted by the complainant/ Respondent No. 2 to ACP, CAW Cell, P.S. New Delhi and submitted that in the entire complaint, there is no allegation which may suggest that the Respondent No. 2 was subjected to harassment or cruelty of such a nature which constitutes the offence u/s 498A IPC. Learned Counsel contended that as per the initial complaint dated 07th September, 2009, Respondent No. 2 had left her matrimonial home on 28th August, 2009 and thereafter, she had no interaction with the Petitioners, therefore, after that date, there is no possibility of her having been treated with harassment or cruelty by the Petitioners. Learned Counsel for the Petitioners also drew my attention to the legal notice dated 31st August, 2009 purported to have been issued by the Respondent No. 2 through her counsel to the Petitioner No. 1 and pointed out that even in the said notice, there is not even a whisper of Respondent No. 2 having been subjected to cruelty or harassment as envisaged in Section 498A IPC. Thus, he has contended that there being no allegation of cruelty in the initial stand taken by the Respondent No. 2, her subsequent complaint dated 04th January, 2010 addressed to ACP, CAW Cell, Police Station Vasant Vihar cannot be relied upon because CrI.M.C.287/2010 Page 3 of 12 it is nothing but improvement and afterthought based on legal advice. In support of this contention, learned Counsel for the Petitioners has relied upon the judgments of Supreme Court in the matters of Bhaskar Lal Sharma and Another Vs. Monica, and Shakson Belthissor Vs. State of Kerala and Another, .

6. In the case of Bhaskar Lal (supra), Supreme Court culled out the essential ingredients of Section 498A IPC and observed thus:

30. For proving the offence u/s 498A of the IPC, the complainant must make allegation of harassment to the extent so as to 18 coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused 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. We do not find any such allegation has been made or otherwise can be found out so as to enable us to arrive at an opinion that the Appellants prima facie have committed such an offence. The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of Vikas were with Monica. Vikas affirmed an affidavit so as to enable Monica to apply for their passports. Vikas, therefore, wanted to have children with them.

7. In the case of Shakson Belthissor (supra), Supreme Court quashed charge sheet filed u/s 498A IPC, inter alia, observing thus:

14. The scope and power of quashing a first information report and charge-sheet u/s 482 Code of Criminal Procedure is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge-sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

29. When we examine the facts of the present case, particularly the FIR and the charge-sheet, we find that there is no such allegation either in the FIR or the in charge-sheet making out a prima facie case as narrated under Explanation (a). There is no allegation that there is any such conduct on the part of the Appellant which could be said to be amounting to cruelty of such a nature as is likely to cause Respondent 2 to commit suicide or to cause any injury to her life. The ingredients to constitute an offence under Explanation (a) of Section 498A IPC are not at all mentioned either in the FIR or in the charge-sheet and in absence thereof, no case is made out. Therefore, Explanation (a) as found in Section 498A IPC is clearly not attracted in the present case.

30. We, therefore, now proceed to examine as to whether the case would fall under Explanation (b) of Section 498A IPC constituting cruelty of the nature as mentioned in Explanation (b). In order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand. When the allegation made in the FIR and the charge-sheet is examined in the present case in the light of the aforesaid provision, we find that no prima facie case even under the aforesaid provision is made out to attract a case of cruelty.

8. From the above judgments, it is clear that the High Court, in exercise of its inherent powers u/s 482 Code of Criminal Procedure., in order to prevent abuse of process of law and to do substantial justice, can quash an FIR at the stage of investigation, if the FIR ex facie fails to make out a case u/s 498A IPC and that every act of cruelty will not attract Section 498A IPC and in order to bring the case u/s 498A IPC, the cruelty alleged must be of the nature as defined in Explanation (b) of Section 498A IPC.

9. On consideration of the contents of FIR in the light of above noted legal position, I am unable to agree with the contention of learned Counsel for the Petitioners. Admittedly, the initial complaint dated 07th September, 2009 addressed to ACP, CAW Cell, Police Station New Delhi was followed by another complaint dated 04th January, 2010 addressed to ACP, CAW Cell, Police Station

Vasant Vihar giving more details of the incident. In the complaint dated 04th January, 2010, which is the basis of the FIR, Respondent No. 2 has made specific allegations regarding harassment and cruelty in relation to demand of dowry. She has alleged that her in-laws used to taunt her and make fun of the dowry brought by her as they considered the same to be sub-standard. She also alleged that her father-in-law and mother-in-law used to instigate her husband over the issue of "len den" (dowry) and her husband used to beat her. In June, 2005, when Petitioner No. 1 had given her Rs. 7000/- to join a Reiki course, her mother-in-law commented as to why said money could not be paid by her father. She also alleged that her brother-in-law and others used to mock her and when, due to mental torture, she wept, the Petitioner No. 1 slapped her many a times in front of everyone. She also alleged that even at the time of her delivery, her in-laws asked her father to give money for meeting the bill of stem cell therapy, which her father refused. She further alleged that Petitioner No. 1 used to threaten her that he will beat her to death or to madness. She has further stated that because of ill treatment and harassment, she left her matrimonial house with her father, leaving her jewellery and dowry articles behind, which have not been returned to her. Even in the earlier complaint dated 07th September, 2009, there is a reference to the remarks made by the in-laws about the insufficient and sub-standard gold in the dowry brought by Respondent No. 2. It is also alleged in that complaint that the father-in-law and mother-in-law of Respondent No. 2 used to instigate Petitioner No. 1 over the issues of dowry ("len den") on which Petitioner No. 1 used to beat her. From the aforesaid averments in the FIR, it is prima facie disclosed that the complainant was subjected to harassment and cruelty in connection with the dowry, as such, a case of cruelty as envisaged in Explanation (b) to Section 498A IPC is prima facie attracted and the offence u/s 498A IPC is made out.

10. Learned Counsel for the Petitioners further submitted that the offence u/s 406 IPC is not made out for the reason that the Petitioners, vide letter dated 07th September, 2009, had offered Respondent No. 2 to come and collect all the articles constituting her "stree-dhan". It is pertinent to note that the complaint of Respondent No. 2 to ACP, CAW Cell, Police Station New Delhi is dated 07th September 2009 and even the letter of Petitioner No. 1 offering to return "stree-dhan" is also dated 07th September, 2009. The question whether letter dated 07th September, 2009 was written to counter the allegations in the complaint dated 07th September, 2009 or it is vice-versa, is a question of fact which needs to be investigated and at this stage, it cannot be said whether or not the Petitioners had offered to return dowry articles/"stree-dhan" to Respondent No. 2 or had returned entire "stree-dhan". However, the fact remains that ex facie, from the allegations in the FIR, a case u/s 406 IPC is made out.

11. Next issue raised by learned Counsel for the Petitioners is that as per the allegations in the complaint, marriage took place at Jaipur, which means that the "stree-dhan" of Respondent No. 2 was given at Jaipur and the same is lying at Jaipur, therefore, the offence u/s 406 IPC, if at all committed, has been

committed within the jurisdiction of courts at Jaipur, as such, Delhi Courts have no jurisdiction in this case. He further contended that even as regards Section 498A IPC, the cause of action, as per the allegations in the FIR, has arisen at Jaipur and no demand of dowry is alleged to have been made at Delhi. Thus, Delhi Courts have no jurisdiction in this case. Learned Counsel has therefore urged to quash the FIR on the point of territorial jurisdiction. In support of this contention, learned Counsel for the Petitioners has relied upon the judgments of the Supreme Court in the matter of Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, wherein, the Supreme Court quashed an FIR pertaining to the offence punishable under Sections 498A and 406 IPC on the ground that no part of cause of action arose within the jurisdiction of the court concerned.

12. Above judgment of Supreme Court in my opinion, is of no help to the Petitioners. In the said judgment, Supreme court took note of Sections 177 and 178 of the Code of Criminal Procedure and found that no part of cause of action pertaining to that case took place within the jurisdiction of the court concerned, as such, the FIR was quashed on the ground of lack of territorial jurisdiction.

13. To my mind, Section 181(4) of the Code of Criminal Procedure is applicable in this case. Section 181(4) of the Code of Criminal Procedure deals with the place of trial in respect of offences of criminal misappropriation or criminal breach of trust, which reads thus:

181. Place of trial in case of certain offences.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

14. On perusal of the aforesaid provision, it is clear that the offence of criminal breach of trust can be tried by a court within whose jurisdiction (a) offence was committed or (b) any part of the property which is subject of the offence was received or retained or (c) property was required to be returned or accounted for, by the accused persons. These three requirements are disjunctive and the courts at any of those three places would have jurisdiction to try such offence.

15. Similar question regarding territorial jurisdiction came up before Allahabad High Court in the matter of Dinesh Kumar and Ors. v. Lalita Mor and Anr. 1995 (3) Crimes 326 All., wherein it was observed thus:

9. Learned Counsel has urged that on the view taken the wife can demand return of the property any where in India and file a complaint there which would cause great harassment to the husband and his relations. In my opinion the difficulty posed is more imaginary than real. The wife is not likely to demand return of the property at a place where she is not residing as it will be equally inconvenient

and difficult for her to prosecute a criminal case at a third place. In view of the reasons discussed earlier the irresistible conclusion is that the place where the wife demands return of her Stridhan-property will also have territorial jurisdiction to try the offence of criminal breach of trust.

16. Similarly, in the matter of Shiv Dayal Arora and Another Vs. Smt. Renu Arora, , Punjab and Haryana High Court, while dealing with this question of jurisdiction referring to Section 181(4) of the Code of Criminal Procedure observed thus:

7. Taking up the question of jurisdiction of the Jalandhar Court, it may be noticed that after being turned out from the matrimonial home, the complainant is staying with her parents at Jalandhar. She has leveled allegations, which make out commission of offence u/s 406, IPC. As per the provisions of Section 181(4) Code of Criminal Procedure., the offence of criminal breach of trust may be enquired into or tried by a Court within whose jurisdiction any part of the property, which is the subject of the offence, was required to be returned or accounted for by the accused person. The complainant has specifically alleged that all the dowry articles have been retained by the accused. The divorce petition filed by Anil Arora was decided by the Court at Jalandhar. On that very day, a request was made to the accused to return the dowry articles to the complainant. Even on the following day, a similar request was made but the accused refused to return the dowry articles. The complainant is living at Jalandhar with her parents. She can, thus, validly ask for the return of dowry articles there. In the event of the accused not doing so, she can knock the doors of the Court at Jalandhar with her grievance.

17. I am in agreement with the aforesaid view taken by the Punjab and Haryana High Court and the Allahabad High Court. In view of the above noted factual matrix of this case, I am of the opinion that prima facie, Delhi court has jurisdiction to try the offences punishable under Sections 406/498A IPC.

18. In view of the above discussion, I do not find any justification for interfering with the investigation by invoking inherent powers u/s 482 Code of Criminal Procedure

19. Petition is dismissed.