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Bimla Devi vs.state & Anr

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Court : Delhi

Decided On : Nov-23-2017

Appellant : Bimla Devi

Respondent : State & Anr

Judgement :

$~1 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI BIMLA DEVI Date of Decision: November 23, 2017 CRL.A. 338/2011 ..... Appellant Through: Mr.Neeraj Bhardwaj, Advocate with appellant in person. versus STATE & ANR .....

... RESPONDENTS
Through: Mr.Sanjeev Sabharwal, APP for the State/R-1 with ASI Bhagmal Singh, PS DBG Road. Mr.N.K.Bansal, Advocate for R-2. PRATIBHA RANI, J.

(Oral) CRL.A. 338/2011 1. The appellant is aggrieved by the order on sentence dated 10th January, 2011 passed by learned Additional Sessions Judge in Crl.A.No.37/2008, pertaining to FIR No.53/90, under Sections 498A/4
IPC, PS D.B.G. Road, Delhi whereby while partly allowing the appeal, the conviction of the respondent No.2/husband for committing offence punishable under Section 498A IPC was maintained while his conviction for committing offence punishable under Section 406 IPC was set-aside and he was ordered to be released on probation.

2. The order on sentence reads as under: 29. Broadly speaking I find that there was sufficient evidence to convict the husband U/S498 I.P.C. alone. CRL.A. No.338/2011 Page 1 of 5 is maintained. His conviction under said section Conviction U/S406I.P.C. is set-aside. Criminal Appeal No.
is partly allowed to that extent.

30. Coming to the sentence part it may be observed that production of salary certificate by husband in case U/S125Cr.P.C. is subject matter of separate F.I.R. for which he is being tried, the same has no relevance in present case. The husband has already faced litigation for 23 years which is enough punishment. The marriage has already been dissolved by decree of divorce, the husband has re-married and has two children out of the second marriage. In case he is sent to jail, the life of second wife and those two children would be spoiled. So the husband is directed to furnish probation in the sum of `10,000/- with one surety in the like amount to be of good behaviour for a period of two years. The same would be coupled with payment of `5,000/- already paid by him would be treated as amount of compensation. The sentence is modified to that extent. The convict is sentenced to 2 year RI for the offence U/s 498A IPC and also liable to pay fine of `5,000/- and for 2 years RI for the offence U/s 406 IPC. Both these sentences would run concurrently. In default of payment of fine further SI for one month and fine if realized be paid to the complainant. 3. Learned counsel for the appellant has submitted that the learned ASJ had committed an error while releasing respondent No.2 on probation. The prayer of the appellant is that the order of the learned MM awarding two years substantive sentence under Section 498A IPC be restored. CRL.A. No.338/2011 Page 2 of 5 4. Learned APP for the State and the learned counsel for the respondent No.2 have submitted that the matter was settled between the parties but the appellant did not approach the Court for quashing of the FIR. The circumstances in which the probation has been given to the appellant in this matrimonial dispute, for committing offence punishable under Section 498A IPC, have been duly recorded by the learned ASJ.

For the reasons recorded by the learned ASJ, the substantive sentence has rightly been substituted by directing respondent No.2 to be released on probation.

5. The order regarding amicable settlement between the parties before Principle Judge, Central District, Family Court, Tis Hazari, New Delhi reads as under: Matter was amicably settled between the parties. Thereafter, the petitioner/DH did not go for quashing and matter on record was not in her name and that caused a suspicion in her mind and for that reason, she had not gone for quashing of the FIR. These submissions are refuted by the counsel for the JD/respondent. Be that as it may, without going into the merit of the respective submissions, it is jointly agreed now by and between the parties during extensive conciliation carried out by this Court that respondent/JD will get FDR/DD in the name of Smt.Bimla for a sum of `10.90 lacs (the exact amount will be calculatable as per FDR placed on record). Another FDR/DD of same amount i.e. of `10.90 lacs along with interest will also be got made meaning thereby that both the FDRs/DDs will be totalling to around `12.80 lacs. CRL.A. No.338/2011 Page 3 of 5 the petitioner/DH These FDRs/DDs in the name of DH/petitioner shall be kept on the records of the Court and will be handed over the DH/petitioner only in the eventuality of complete cooperation by in quashing of the FIR bearing no.2
PS Subzi Mandi and No.
PS Desbandhu Gupta Road, Karol Bagh as well as withdrawal of appeal/revision pending in the Hon'ble High Court as well as all other proceedings pending before any other Court/forum including proceedings before this Court U/s 125 Cr.P.C. / executions petitions/127 Cr.P.C. etc. etc. Ld. Counsel for JD/respondent have also undertaken on behalf of JD/respondent that JD shall also withdraw all the litigation of every nature concerning the marital alliance. Both the sides have submitted that they have entered into amicable settlement out of their sweet will and wish and without any threat, pressure, coercion etc. Both the parties undertake not to resile from the present settlement. It is stated by both the Advocates for the DJ that they have sought instructions from JD/respondent and have agreed to the amicable settlement only after receiving the instructions. Advocates have submitted that JD will come from Kalka, Haryana and will sign in token of giving of his instructions by hi to his advocates o n 17.02.2016 and they are taking their personal liability regarding the appearance of JD. Case shall come up the purpose on 17.02.2016. Parties are directed to abide by the terms and conditions of the settlement. Copy of the order be given dasti. for CRL.A. No.338/2011 Page 4 of 5 6. During the

course of hearing today, learned counsel for the appellant does not dispute that the amount of `21.80 lakhs is lying deposited with the Court below. The petitioner submits that she wants the respondent to purchase a house for her. The appellant cannot be made to change her stand and go on increasing her demand after entering into an amicable settlement, terms of which have been duly complied by the respondent No.2/husband.

7. The finding or sentence passed by a Court of competent jurisdiction can be reversed or altered by a Court of appeal only where failure of justice has been occasioned; this is not so in this case.

8. Since the parties have settled their dispute, the respondent No.2 is remarried and settled in his family, the order passed by learned ASJ extending the benefit of probation to him for the offence punishable under Section 498-A IPC does not warrant any interference by this Court as the appellant has failed to prove that it has occasioned failure of justice.

9. The appeal is dismissed. CRL.M.A.1657/2017 Dismissed as infructuous. PRATIBHA RANI (JUDGE) NOVEMBER23 2017 hkaur CRL.A. No.338/2011 Page 5 of 5

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