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Court : Delhi

Decided On : Aug-20-1999

Reported in : 1999VAD(Delhi)407; 81(1999)DLT325; 1999(51)DRJ36

Judge : M.S.A. Siddiqui, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 406 and 498-A; Code of Criminal Procedure (CrPC) , 1973 - Sections 239 and 439

Appeal No. : Crl. Revision 309/97

Appellant : Sapna Ahuja

Respondent : State and ors.

Advocate for Def. : Mr. Rajesh Katyal, Adv.

Advocate for Pet/Ap. : Mr. Arun Kumar, Adv

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. After hearing learned counsel for the parties, I propose to dispose of this revision at the stage of admission itself.

2. This revision is directed against the order dated 12.2.1997 passed by Ms. Reena Singh Nag, MM discharging the respondents of the offence charged under Section 498-A/406 IPC.

3. The preamble of the prosecution reveals that on 7.12.1994, the petitioner was married to respondent No. 2. Respondent No. 3 (late RSD Ahuja) was the father and respondent No. 4 is the mother of respondent No. 2. The respondents No. 2 to 4 were not satisfied with the dowry given at the time of marriage of the petitioner, which projected a shadow on marital life of the petitioner and the respondent No 2. Petitioner's married life became gloomy and she was subjected to harassment and mental cruelty in connection with the demand of dowry. The respondent No. 2, 3 and 4 took active role in perpetrating torture on the petitioner. Apprehending danger to her life, the petitioner left the matrimonial home. On 21.3.1995 she made a written complaint to the Deputy Commissioner of Police (Crime against Women Cell. Nanak Pura), New Delhi on the basis of which the FIR No. 349/95 was registered under section 498-A-406 IPC at Police Station, Patel Nagar. New Delhi. Investigation pursuant to the said FIR culminated into submission of a charge sheet under Section 498A/406 IPC against the respondents 2 and 4. During the pendency of the case, respondent No. 3 late RSD Ahuja died.

4. When the case came up for consideration on charge before the learned Metropolitan Magistrate, a plea was raised on behalf of the respondents that there was not any sufficient ground for proceeding with the trial against them and they should be discharged in accordance with Section 239 of the Code of Criminal procedure. The learned Metropolitan Magistrate accepted the plea and discharged the respondents under Section 239 of the Code vide order dated 12.2.1997. Aggrieved by the said order of discharge the petitioner has come up in revision before this Court.

5. Assailing the validity of the impugned order, learned counsel for the petitioner contended that the learned Magistrate has committed a patent illegality in discharging the respondents of the offence charged under Section 498-A/406 IPC which has resulted in miscarriage of justice. Learned Magistrate has catalogued the following circumstances for discharging the respondents:

1. On 31.12.1994, the petitioner disappeared from her matrimonial home;

2. On 1.1.1995 respondent No.2 and his father lodged a report at the Police Station, R.K. Puram about her disappearance from her matrimonial home. Thereafter respondent No. 2 started search for the petitioner and came to know about illicit intimacy between her and her boyfriends;

3. On 2.1.1995. the respondent No. 2 and his father again lodged a report at Police Station Janak Puri about the petitioner's disappearance from her matrimonial home;

4. On 1.1.1995, the petitioner addressed a letter to the Station House Officer intimating him about leaving the matrimonial home on her own accord;

5. On 1.1.1995. the petitioner addressed similar letter also to the S.H.O. of the Police Station, Patel Nagar.

6. On 17.1.1995 the petitioner gave a statement before the sub Inspector Parmanand of Police Station Janak Puri about her strained relations with the respondent No. 2;

7. That the respondents also complained to the DCP (West) and ACP (Crime against Women Cell), Rajouri Garden about the harassment meted out to them by the petitioner's parents and subsequent withdrawal of these complaints on the offer of settlement made by the petitioner's parents;

8. That the allegations about the petitioner's harassment by the respondents in connection with the demand of dowry do not inspire confidence.

6. On consideration of the aforesaid circumstances, the learned Magistrate came to the conclusion that the material collected by the Investigating Agency does not raise the strong suspicion for framing of charges under Section 498-A/406 IPC. At this stage it would not be appropriate to mention in any great detail the facts of the prosecution case against the respondents or to refer all the materials and the evidence which may be produced by the prosecutor when a trial proceeds in the Court. Unnecessary details in that regard have got to be avoided so that it may not

prejudice either the prosecution case or the defense of the respondents. Here, I would like to caution that nothing which may have to be said in support of this order is meant and should be understood to prejudice in the least the case of either party at the trial.

7. On perusal of the impugned order, it appears that the learned Magistrate felt persuaded to take the view that the three circumstantial facts, namely: (i) that on 31.12.1994 the petitioner left the marital home, (ii) that on 1.1.95 the petitioner intimated to the Station House Officers, Patel Nagar and Janak Puri about leaving of her matrimonial home on account of her strained relations with her husband and (iii) the complaints were made by the respondents to the DCP (West) and ACP (Crime against Women Cell), Rajouri Garden about the harassment meted out to them by the petitioner's parents and subsequent withdrawal of their complaints at the instance of the petitioners parents, destroy the whole edifice of the prosecution case.

8. The FIR lodged by the petitioner brings out with telling effect the distressed life that the petitioner was leading almost from the day of her marriage with the respondent No. 2. Petitioner's life was made intolerable by the respondents by constantly demanding her to get them cash worth rupees one lac and a Maruti car. Being depressed with the ill treatment and apprehending danger to her life, she left her matrimonial home. Her statement recorded under Section 161 Cr. P.C. is also to the same effect. At the stage of framing of the charge, the FIR and the material collected by the Investigating Agency cannot be sieved through a calendar of finest gauzes to test its veracity. A roving enquiry % into the pros and cons of the case by weighing the evidence as if the learned Magistrate was conducting the trial is not expected or even warranted at that stage. In this context, I may usefully excerpt the following observations of their Lordships of the Supreme Court in State of Bihar v. Ramesh Singh 1977 SC 2018:

'..... at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defense of the accused. It is not obligatory for the Judge at that stage of the trial to consider in

any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Sec. 227 or Sec. 228 of the code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.'

9. In the instant case, the FIR and the statement of the petitioner recorded under Section 161 is sufficient to raise a strong suspicion against the respondents for proceeding against them under Sections 498A/406IPC. In this view of the matter, I am constrained to observe that the learned Metropolitan Magistrate has committed a patent illegality in discharging the respondents under Section 239 Cr.P.C. which has led to miscarriage of justice.

10. For the foregoing reasons stated above the impugned order dated 12.2.1997 is set aside and the learned Magistrate is directed to frame appropriate charge or charges against respondents 2 and 4 and the trial shall proceed further in accordance with law.

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