

Vijay and anr. Vs. State and anr.

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Court : Delhi

Decided On : Feb-28-2008

Reported in : I(2008)DMC875; 2008(102)DRJ294

Judge : S. Muralidhar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 406 and 498A

Appeal No. : Crl. M.C. 1860-61 of 2006 and Crl. M. 3013 of 2006(stay)

Appellant : Vijay and anr.

Respondent : State and anr.

Advocate for Def. : O.P. Saxena, APP.,; Vijay Aggarwal and; Rakesh Mukhija,

Advocate for Pet/Ap. : Siddharth Luthra, Sr. Adv. and; Shri Singh, Adv

Disposition : Petition dismissed

Judgement :

S. Muralidhar, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr PC') seek the quashing of FIR No. 177 of 2004 under Sections 498A/406 IPC registered at Police Station Jaffarpur Kalan pending in the court of learned

Metropolitan Magistrate ('MM'), New Delhi and all proceedings consequent thereto.

2. The Petitioners in Criminal Misc. Case No. 1860-61 of 2006 are the cousin brothers of the complainant's husband. The Petitioners in Criminal Misc. Case No. 1862-63 of 2006 are the brother-in-law (Nandoi) of the complainant and the father of the Nandoi. The Petitioners in Criminal Misc. Case No. 1880-82 of 2006 are Smt. Sukhma the sister of the husband's father, her husband Hukam Singh and their daughter Smt. Magan.

3. The narration in the FIR is that Shri Mamraj Yadav son of Shri D.R. Yadav married the complainant Smt. Lalita on 15th May 2002. It is stated that in 2004 the complainant lodged a complaint in the Crime Against Women Cell ('CAW Cell') Police Station Vasant Vihar but stopped cooperating in those proceedings on 9th August 2004. She thereafter filed another complaint before the CAW Cell Police Station Nanak Pura which was also not pursued. A third complaint was filed before the CAW Cell Police Station Maya Puri. The Petitioners obtained anticipatory bail in those proceedings.

4. Thereafter the complainant approached the police again and FIR No. 177 of 2004 was registered at Police Station Jaffarpur Kalan under Sections 498A/406 IPC against the Petitioners here. A challan was filed on 5th September, 2005 in the court of the learned MM. By an order dated 5th September, 2005 the learned MM took cognizance of the offences and granted regular bail to the accused.

5. The submissions of Mr. Siddharth Luthra, learned Senior counsel for the Petitioners are as follows:

(a) The complainant herself at one stage during the proceedings for grant of anticipatory bail made a statement before the learned ASJ that she was willing to go back to the matrimonial home. Thereafter the present complaint was filed which led to the registration of the FIR. It is clear, therefore, that the proceedings were mala fide.

(b) The complaint is virtually against all the members of the family including very distant relatives of the husband. It is therefore a clear abuse of the process of law. The allegations in the FIR taken on their face value at the highest constitute taunts for not bringing dowry and, not even a prima facie case is made out for the offences Under Sections 406 and 498A IPC. There is no allegation of entrustment of property to any of these Petitioners. Reliance is placed on the judgment of this Court in Savitri Devi v. Ramesh Chand and Ors. : 104(2003)DLT824 and of the Supreme Court in Ramesh v. State of TamilNadu : 2005 CriLJ1732 .

(c) The earlier three complaints which had been filed with the CAW Cell were not pursued by the complainant. A further FIR on the same set of allegations ought not to have been entertained.

(d) Although a chargesheet has been filed, the present petition Under Section 482 is maintainable. In support of this submission reliance is placed on the decision of the Full Bench of this Court in Neelam Mahajan Singh v. Commissioner of Police and Ors. : 53(1994)DLT389 and of the Supreme Court in R.P. Kapur v. State of Punjab : 1960 CriLJ1239 .

6. On behalf of the Respondents, Mr. Vijay Aggarwal, learned Advocate for the complainant and Mr. O.P. Saxena, learned APP for the State raise a preliminary objection to the maintainability of the present petition. They rely upon the judgment of this Court in Harsh Khurana v. Union of India and Anr. 2005 [2] JCC 1082 wherein it has been held that once a charge sheet has been filed, no petition Under Section 482 Cr PC for quashing can be entertained. The remedy available to an accused is to advance the possible arguments at the stage of framing of charge. Reliance is also placed on the judgment in Angad Paul and Ors. v. M.D. Jindal 2005 [2] JCC 1093. It is next submitted that it has been explained in Gananath Patnaik v. State of Orissa : [2002]1SCR845 that cruelty for the purposes of Section 498A could include mental cruelty as well. It is submitted that there is sufficient material available with the prosecution to proceed against each of the petitioners for the offences in question and that no grounds exist for interference with the criminal proceedings.

7. Although a preliminary objection as to the maintainability of these petitions has been raised, this Court does not propose to examine that question since it finds that in any event no case has been made out on merits by the petitioners. A perusal of the FIR and charge sheet filed in the present case shows that there are very specific allegations against each of the Petitioners who are arrayed as accused. It is not as if the allegations are casual and sweeping against all the accused generally. A sampling of these allegations (which have been roughly translated from the original in Hindi) read as under:

My husband, sister in law, mother in law, father in law and my elder father in law and his two sons and aunt of my husband and his son started misbehaving, beating and abusing me daily. When I lost to tolerate, I told about the same to my families that they are still demanding for a specific items like big car in place of Santro DLX car Rs. 10 lakhs for opening of a lab and for purchasing a new house in Gurgaon on the plea that I will be unhappy here if I live there. For installation of tube well in Farooq Naga and for construction of house there etc.

My husband, sister in law, mother in law and father in law started beating me and telling that whenever I go to my home these items must be brought. Their behavior towards me was not good and on small issues my husband used to say that why my brother is not going to the house of my Bua and why not discussing with bua and his daughter and asked me to go there and brought something. All the expenses of my sister has to be borne by you.

Once when I woke up instantly from sleep I found that my husband, father in law, elder father in law and his two sons were talking that let us get a suicide note written from a handwriting expert and kill her and thereafter we will tell that she has committed suicide. My Aunt- mother in law and her daughter often used to talk over phone with my husband and mother in law that you have make her bad. If were we there, would have make her right in one day. Beat her to such an extent that she became slave of yours for entire life. When you will behave with her like an animal, then she will become an animal. My aunt mother in law used to threat me to kidnap me on saying that she has connection with such persons that they will get me vanished and no one will find my corpse even. When one night my

husband, mother in law, father in law beat me then on the next day my brother asked about the said beatings, then my aunt mother in law told that whenever we will like we will beat you, but you will not call your brother nor we will allow the neighbours to come. My aunt father in law and her daughter used to threaten me that if you tell this to the police or the police came to our house, then your husband will commit suicide. The daughter of aunt father in law used to talk often with my husband by using ugly words which a sister cannot dare to talk with a brother.

In this way one and a half years spent in my in-laws house, but one day when my husband, sister in law, father in law, mother in law, elder father in law and his two sons and aunt of my husband and her daughter were present when they all insulted me for their demand. I told them that at this juncture my parents cannot fulfill your demand. On saying so they all became aggressive and beat me and throw me out of house forcibly.

On 10 January 2004 they again beat me and called my father on the pretext of their demand and thereafter my husband, father in law, elder father in law and his two sons Vijay and Jagbir beat my father of which I made a complaint to the Vasant Kunj police station. PCR came and as a result of that my husband, father in law and my elder brother were put in lock up. Amidst two respectable persons from village Rajokari Shri Om Dutt Yadav and Shri Babu Lal Yadav took the responsibilities and got the matter settled and my husband and father in law gave in writing that in future they will not repeat such thing and thereafter I was taken back to my matrimonial house from the police station. On 29 January 2004 at night 11.00 pm they again beat me on account of dowry and I made a PCR call at 11.00 night as a result of which my father in law and husband remained in police custody on the next day i.e. 1 March 2004. During scuffle I received injuries on my hand which MLC was prepared. When my husband and father in law came out of the jail then the father in law of my sister in law Jaikishan resident of Khaira, Najafgarh New Delhi-43 came to my matrimonial house. My husband discussed with him and thereafter in the evening he came in sot condition and started abusing me filthy in presence of my mother in law and father in law and husband and told my husband and father in law that you beat her Lesser, broke her leg and hands to at she cannot be able to go to the police station. While threatening me kill told that I

should do as they direct otherwise you have to lost your life and further told that your hand and legs will be broken in such a way that you will forgot the police and your relatives and provoked my father and mother in law to beat me. Thereafter on 19th March 2004 at 7.00 AM again beat for demand of dowry due to which I received much injury in my abdomen. A call about the same I made to 1091 and PCR and my MLC was done and my husband and father in law were put in lock up.

8. There are numerous other allegations as well in the charge sheet which are very detailed and need not be reproduced since the above extracts are sufficient to indicate that the allegations are specific and not of a general nature. Upon a reading of the FIR and the charge sheet as a whole it is not possible to come to the conclusion that they do not make out even a prima face case against the Petitioners for the offences in question. While it is true that even the distant relatives of the husband have been roped in, this must be viewed in the context of the fact that the extended family does live in villages within the National Capital Region of Delhi and the prevalent social milieu in that setting does facilitate their constant interaction. Moreover, the allegations are specific qua each of them. The nature of the allegations is also quite distinct from that noted by the Supreme Court in *Ramesh v. State of Tamil Nadu* or by this Court in *Savitri Devi*. It is not possible to draw comparisons between these cases. The present petitions under Section 482 being limited in their scope, the exercise of separating the grain from the chaff for determining the truth of the allegations cannot be undertaken at this stage.

9. Although the earlier complaints might have been filed what we are concerned with really is the present FIR which has been investigated and the charge sheet that has been filed thereafter. Given the very detailed allegations contained therein it is not possible to come a conclusion, on a mere perusal of the FIR and chargesheet, that the present proceedings have been instituted mala fide. Even if the complainant had one stage agreed to live with her husband that obviously did not work out. It does not per se falsify all that is stated in the FIR and charge sheet. These are aspects for which the matter will have to go to trial. In any event, as pointed out by counsel for the respondents, the petitioners have an opportunity

of pointing out to the trial court at the stage of framing charges whether the contents of the FIR and charge sheet are sufficient to charge each of them with the offences Under Sections 406 and/or 498A IPC. If they are aggrieved by the order framing charges, they still have a remedy by way of revision.

10. This Court finds no ground to interfere Under Section 482 Cr PC.

11. The petitions are dismissed with no order as to costs. The interim orders stand vacated and the applications are also dismissed.

12. No observation made in this order is intended to influence the order that may be passed by the trial court at any of the subsequent stages of these proceedings.

13. The trial court will now proceed with the matter as expeditiously as possible.

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