

V.N. Sharma and ors. Vs. State

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Court : Delhi

Decided On : Jul-07-1995

Reported in : 1996CriLJ1116; 1995(34)DRJ298; 1995RLR524

Judge : J.K. Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 228; [Indian Penal Code \(IPC\), 1860](#) - Sections 498A

Appeal No. : Criminal Revision Appeal No. 197 of 1993

Appellant : V.N. Sharma and ors.

Respondent : State

Advocate for Pet/Ap. : P.P. Malhotra,; Zafar Sadique and; R.K. Bahri, Advs

Judgement :

J.K. Mehra, J.

(1) ADMIT.

(2) I have heard the parties. Briefly stating facts of the case are that on 19.09.1991, one Ms. Sunita lodged a complaint before D.C.P., Anti Dowry Cell against (1) her' husband, Mr. Satish Kumar, (2) elder brother of the husband, Mr. Prem Chand, (3) elder brother's wife Mrs. Lalita, (4) Mr. Sunil Kumar, the

petitioners and others seeking action for demanding dowry.

(3) The main grievance of the petitioners is that none of them is either residing in the same premises or are responsible for any of the acts alleged against the husband, father-in-law or sister-in-law. One of the four petitioners has since died, who was uncle of the husband. Out of the other three, one Mr. Phulena Dixit, petitioner No.4 is aged 75 years, and is the husband of the sister of the father of the accused, Mr. Satish Kumar, who is the husband of the complainant. Mrs. Asha Sharma, petitioner No.2 is the daughter of said Mr. Phulena Dixit and Dr. V.N. Sharma, petitioner No.1 is the husband of Mrs. Asha Sharma. It appears to be absolutely clear that Dr. V.N. Sharma is a distant relation of the husband of the complainant. He and his wife, Mrs. Asha Sharma are not living in the same premises where the complainant after her marriage to Mr. Satish Kumar had been living in Village Mandavli in Shahdara Suburb of Delhi. At the material time, Dr. V.N. Sharma and his wife were living in Sector Xii, Noida, which is not situated in close proximity to Mandavli, Shahdara. Even Mr. Phulena Dixit, who is the brother-in-law of the father of the husband of the complainant, was staying at Noida, which falls in U.P. and could not have been a frequent visitor to Mandavli. Mr. Malhotra is not holding any brief for the husband, Mr. Satish Kumar, his brother-Mr. Prem Chand and Mr. Prem Chand's wife-Mrs. Lalita or his second brother-Mr. Sunil Kumar, who are also being proceeded against. Mr. Malhotra's main grievance is that the allegations contained in the complaint against the petitioners in the present case are absolutely vague. On perusal, I find that no particulars of any specific role played by anyone of them on any incident or the dates of any incidents or- even the approximate timings of any incidents are given in the complaint. The only allegation in the complaint is that Mrs. Lalita, sister-in-law of husband had illicit relations with petitioner No.1. Even this allegation is absolutely vague. In any event, this allegation has no bearing on the case under Sections 498 and 34 I.P.C.

My attention has also been drawn to various authorities, which are as under:-

(1) Sri Kishan Sharma & Ors. v. State of Haryana & Am., reported as 1989 (1) C.L.R.620.

(2) Suresh Kumar & Ors. v. State of Haryana, reported as 1989 (2) RCR 73.

(3) Jasbir Kaur & Anr. v. The State of Haryana & Anr., reported as 1990 (2) RCR 243.

(4) Rai Singh v. Gurdev Kaur, reported as 1989 (1) RCR 647.

(5) Krishan Lal & Ors. v. State of Haryana & Anr., reported as 1990 (3) RCR 183.

(6) Pratap & Ors. v. State of Haryana, reported as 1990 (3) RCR 529.

(7) Surinder Kumar & Ors. v. Bihari Lal Bharti, reported as 1992 (1) Crimes 58.

(8) Nanak Chand & Ors. v. State of Haryana & Anr., reported as 1992 (1) Crimes 22.

(4) In the case of Jasbir Kaur & Anr. v. State of Haryana & Anr., the Court has very rightly observed as follows:-

'It is well known that an estranged wife will go to any extent to rope in as many relations of husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.'

(5) In the present complaint also, the major grievance and the apprehension of the complainant appears to be that husband will not come to fetch her. That was the main apprehension. The remedy for this could be an action for restitution of conjugal rights which was always available to the wife, but instead of that she has chosen to proceed under Section 498A of 1.P.C. But in doing so, the allegations in the complaint relating to the present applicants are such even a prima facie case cannot be said to have been made out on the basis thereof.

(6) Mr. Bahri has drawn my attention to the case of Union of India v. Prafulla Jynar Samal, reported as 1979 C.L.J. 154 wherein in para 10, the Hon'ble Supreme Court has laid down the considerations and principles relating to framing of charge or discharge of the accused of which principles No.3 and 4 are set out hereunder:-

'(3)The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4)That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth- piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

(7) Looking to the allegations in the complaint and the probabilities and likelihood or otherwise of any interference from the applicants, I cannot, but hold that the story against these applicants appears to be highly improbable and unacceptable and keeping in view the allegations, the other considerations such as distance between the residence of the accused and the remoteness of relationship, I am of the view that there is no prima facie case against any of the applicants and the material referred to by both counsel does not give rise to any grave suspicion. As such, they are entitled to be discharged. For these reasons, the impugned order to the extent it affects the petitioners, is set aside. It is further clarified that whatever is observed herein, will not in any manner affect the merits of the case of prosecution against other accused, being proceeded against. The petition stands disposed of with no order as to costs.

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