

Chander Bhan and anr. Vs. State

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SooperKanoon Citation : sooperkanoon.com/706716

Court : Delhi

Decided On : Aug-04-2008

Reported in : II(2008)DMC359

Judge : Kailash Gambhir, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A

Appeal No. : Bail Application No. 1627 of 2008

Appellant : Chander Bhan and anr.

Respondent : State

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : Rajesh Khanna, Adv

Judgement :

Kailash Gambhir, J.

1. By way of the present petition the petitioners who are parents-in-law of the complainant seek grant of anticipatory bail.

2. Mr. Sharma, Counsel for the State submits that allegations are serious in nature against the petitioners, therefore, the petitioners do not deserve grant of anticipatory bail.

3. Complainant is present in the Court. She states that there is no possibility of her going back to the matrimonial home. However, the complainant is not averse to the matter being sent before the Mediation Cell. Let the matter be sent to the Mediation Cell, Rohini Court, Delhi for exploring the possibility of amicable settlement between the parties.

4. Let the parties appear before the Mediation Cell, Rohini Court, Delhi on 11.8.2008 at 4.00 p.m.

List the matter before the Court on 23.9.2008. Till then the petitioners shall not be arrested.

5. Before parting with this case, I deem it expedient and in the larger interest of saving matrimony of the couples and to restore peace between the two hostile families of husband and wife who once must have celebrated the marriage of couple with great zeal, fervour and enthusiasm but when faced with many facets and stark realities of life entangled themselves to fight a long drawn legal battle instead of building confidence, trust, understanding, mutual respect for each other and their respective families.

6. The offence of cruelty by husband or relatives of husband (Section 498A) was added in 1986 to curb the vice of subjecting women to coerce them or their relatives to meet unlawful demands for dowry.

7. Since its enactment, this provision has been subjected to systematic and sustained attack. It has been called unfair and responsible for the victimisation of husbands by their wives and her relatives. No doubt there may be many deserving cases where women are being subjected to mental and physical cruelty at the hands of the avaricious in-laws. But such cases have to be distinguished from other cases where merely due to trivial fights and ego clashes the matrimony is facing disaster.

8. What is not comprehended by young minds while invoking the provisions of the likes of Sections 498A and 406 of IPC is that these provisions to a large extent have done incalculable harm in breaking matrimony of the couples. Despite the

western culture influencing the young minds of our country, still it has been seen that Indian families value their own age old traditions and culture, where, mutual respect, character and morals are still kept at a very high pedestal.

9. It has been noticed in diverse cases, where the brides and their family members in litigation find the doors of conciliation shut from the side of groom and his family members only on account of there having suffered the wrath of Police harassment first at the stage when matter is pending before Crime against Women Cell and thereafter at the time of seeking grant of anticipatory or regular bail and then the ordeal of long drawn trial.

10. Daily, matters come before this Court seeking bail and for quashing of FIRs registered under Sections 498A/406 of the IPC. This Court is of the view that it is essential to lay down some broad guidelines and to give directions in such matters in order to salvage and save the institution of marriage and matrimonial homes of the couples.

GUIDELINES

1. Social workers/NGOs

There is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and on going hostility the hapless children are the worst victims. Before a wife moves to file a complaint with the Women Cell, a lot of persuasion and conciliation is required:

(a) The Delhi Legal Service Authority, National Commission for Women, NGOs and social workers working for upliftment of women should set up a desk in Crime against Women Cell to provide them with conciliation services, so that before the State machinery is set in motion, the matter is amicably settled at that very stage. But, if ultimately even after efforts put by the social workers reconciliation seems not possible then the matter should be undertaken by the police officials of Crime against Women Cell and there also, serious efforts should be made to settle the matter amicably.

2. Police Authorities:

(a) Pursuant to directions given by the Apex Court, the Commissioner of Police, Delhi vide Standing Order No. 330/2007 had already issued guidelines for arrest in the dowry cases registered under Sections 498A/406, IPC and the said guidelines should be followed by the Delhi Police strictly and scrupulously:

(i) No case under Section 498A/406, IPC should be registered without the prior approval of DCP/Addl. DCP.

(ii) Arrest of main accused should be made only after thorough investigation has been conducted and with the prior approval of the ACP/DCP.

(iii) Arrest of the collateral accused such as father-in-law, mother-in-law, brother-in-law or sister-in-law, etc. should only be made after prior approval of DCP on file.

(b) Police should also depute a well trained and a well behaved staff in all the crime against women cells especially the lady officers, all well equipped with the abilities of perseverance, persuasion, patience and forbearance.

(c) FIR in such cases should not be registered in a routine manner.

(d) The endeavour of the Police should be to scrutinize complaints very carefully and then register FIR.

(e) The FIR should be registered only against those persons against whom there are strong allegations of causing any kind of physical or mental cruelty as well as breach of trust.

(f) All possible efforts should be made, before recommending registration of any FIR, for reconciliation and in case it is found that there is no possibility of settlement, then necessary steps in the first instance be taken to ensure return of Stridhan and dowry articles, etc. by the accused party to the complainant.

3. Lawyers:

Lawyers also have a great responsibility in this regard:

(a) While drafting pleadings/complaints, the lawyers should not unnecessarily suggest incorporation of wild allegations, or in character assassination of any of the parties or their family members whatever the case may be.

(b) Lawyers are also to endeavour to bring about amicable settlement between the parties as they are expected to discharge sacred duty as social engineers in such cases instead of making them target for monetary considerations by multiplying their cases.

4. Courts:

Subordinate Courts, be it trying civil or criminal cases concerning bail, maintenance, custody, divorce or other related matters shall in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

(a) The first endeavour should be for possible reunion and restitution of the parties and as a last endeavour to bring about peaceful separation.

(b) If possible extra time should be devoted to such matters to restore peace in the lives of rival parties be it by re-uniting them or even in case of their parting ways.

(c) Conciliatory proceedings by the Court should preferably be held in camera to avoid embarrassment.

(d) Wherever, the Courts are overburdened with the work, necessary assistance of Mediation and Conciliation Cells should be sought.

11. Apart from above directions it would not be out of place to ask parties also to themselves adopt a conciliatory approach without intervention of any outside agency and unless there are very compelling reasons, steps for launching prosecution against any spouse or his/her in-laws be not initiated just in a huff, anger, desperation or frustration.

Dasti.

