

Nitika Gauba Vs. State and ors.

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Court : Delhi

Decided On : Feb-14-2011

Judge : Shiv Narayan Dhingra, J.

Acts : Indian Penal Code (IPC) - Sections 498A, 406

Appeal No. : Crl. MC No. 2462/2010

Appellant : Nitika Gauba

Respondent : State and ors.

Advocate for Def. : Mr. Sunil Sharma, Adv.

Advocate for Pet/Ap. : Mr. M.S. Yadav, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. This application has been preferred by the petitioner for cancellation of anticipatory bail granted to the Asha Gauba (mother-in-law), Kanika Gauba (nanad) and Shiv Kumar Gauba (Taya) on the ground that the learned ASJ while

granting anticipatory bail had not appreciated the facts correctly. The respondent no.2 is the widowed mother in law of complainant, respondent no.3 is unmarried sister in law(husband's sister) of the complainant and respondent no.4 is the elder brother of deceased husband of respondent no.2 (Taya Sasur).

2. In the complaint, the applicant had made allegations against the husband and these three respondents for harassing her for dowry. The learned ASJ while granting bail to them had considered that mother in law of complainant was a government servant in Ministry of Railways and was aged around 50 years. The respondent no.4 Taya Sasur was aged around 70 years and respondent no.3 was an unmarried sister of respondent no.2. The learned ASJ observed that he had perused the police file and without commenting upon the merits or otherwise of the allegations, considered that no useful purpose was likely to be served by directing the investigating officer to arrest these three persons for the purpose of investigation and he therefore granted anticipatory bail to them.

3. In the grounds for cancellation of anticipatory bail, it is stated that the husband of the petitioner played fraud upon the petitioner. While petitioner and husband were living under the same roof, he filed a divorce petition against the petitioner without information of the petitioner and even after filing divorce petition, he continued to maintain physical and sexual relations with her. The respondents no.2, 3 and 4 were having knowledge of this act of the husband of the petitioner. The husband in order to blackmail her and to disrepute her took vulgar snaps of her to force her to withdraw the petition. She also alleged that she was badly beaten up by mother in law, nanad. Even servant of respondent no.2 gave her merciless beatings. Her husband hatched up a criminal conspiracy of criminal assault on her on 25th April 2010 and she had to be taken to DDU Hospital by the police where her MLC was prepared.

4. For cancellation of bail, the court must have strong reasons. In the present case, the bail was granted by the trial court looking into the nature of allegations. In cases of matrimonial discord Section 498A/406 IPC are invariably invoked against every family member of husband, it becomes very difficult for the trial court to assess the truth of the allegations made by the complainant. Normally every

complainant ropes in all relatives including the remote relatives living far away from the matrimonial home making stereotyped and similar allegations against everybody. This tendency of roping in every known relative including the minors in offences under Section 498A/406 IPC etc has in fact made these provisions introduced in Indian Penal Code, to prevent cruelty upon women, blunt. The gross misuse of these provisions for roping in every known relatives of the husband poses a grave problem for the courts during trial and while deciding bail applications. Only oral statement of complainant and her parents is there in respect of cruelty and dowry demand, and normally there is no agreed list of articles given at the time of marriage Dowry Prohibition Act proved futile to bring to an end to the evil of dowry for this reason. Mere oral allegations of giving huge dowry without substantiating these allegations by bills of purchase of the articles or list prepared at the time of marriage and signed by both the parties cannot be given credence. Even those people, who have meager salaries or are hand to mouth, claim of giving huge amounts at the time of marriage. It is in the interest of both the parties that a list of dowry articles should be prepared by the parties at the time of marriage duly signed by both the parties. Though in this way, the evil of dowry cannot be curbed but it would curb the tendency of making astronomical claims later on just to rope in every member of the family of in laws as a criminal.

5. In the present case, there is no corroboration of the oral allegations of the applicant. I find no reason to cancel the anticipatory bail granted to the respondents no.2 to 4 when there are no allegations of misuse of the bail on their part. The application for cancellation of bail is hereby dismissed.

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