

IN THE HIGH COURT OF DELHI AT NEW DELHI

CrI.M.C. No.2645-53/2005

Sanjeev Kumar Aggarwal and Ors Petitioners

through: Mr. R.M.Sinha, Advocate

VERSUS

State and Anr.

Respondents

**through: Mr. Sanjay Khanna, Advocate
for the complainant.**

**Mr. Jaideep Malik, Advocate
for the State.**

RESERVED ON : 4.10.2007

12.10.2007

DATE OF DECISION: 12.10.2007

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

: PRADEEP NANDRAJOG, J.

**1. Petition under Section 482 of the Code of Criminal Procedure, 1973
prays for quashing the FIR No.1006/2002 registered at P.S. Nangloi under**

Sections 498-A/406/34 IPC and the proceedings arising out of the said FIR.

2. Briefly stated, the facts are that the marriage between petitioner no.1, Sanjeev Aggarwal and respondent no.2, Sunita Aggarwal was solemnized on 17.7.94 as per Hindu rites and ceremonies. Unfortunately, the marriage turned sour and they started living separately since the year 1999. A daughter was born to the parties out of the said wedlock.

3. Respondent no.2 filed a complaint against under-noted persons on 21.10.2002 for an offence under Sections 498-A, 406 read with Section 34, IPC.

S.

No.

Name

Relation with the complaint

1.

Sanjeev Aggarwal (Petitioner No.1)

Husband

2.

Nand Kishore Aggarwal (Petitioner No.2)

Father-in-law

3.

Sushila Devi Aggarwal (Petitioner No.3)

Mother-in-law

4.

Satish Aggarwal (Petitioner No.4)

Brother-in-law (Jeth)

5.

Rajni Aggarwal (Petitioner No.5)

Sister-in-law (Jethani)

6.

Sunil Aggarwal (Petitioner No.6)

Brother-in-law (Jeth)

7.

Shalini Aggarwal (Petitioner No.7)

Sister-in-law (Jethani)

8.

Rajiv Aggarwal (Petitioner No.8)

Brother-in-law (Jeth)

9.

Preeti Aggarwal (Petitioner No.9)

Sister-in-law (Jethani)

10.

Dr. N.K. Gupta

Nephew of Petitioner no.3

4. On the basis of the aforesaid complaint, FIR No.1006/02 dated 18/112002 was registered.

5. Chronological narration of facts, as alleged in the complaint, is as follows :-

A On 2.7.94, families of petitioner no.1, Sanjiv and respondent no.2, Sunita mutually decided that Sunita and Sanjiv would enter into a matrimonial alliance. A demand for dowry was put forth by the family of Sanjiv. On that date itself, a sum of Rs.5 lakhs was given by the father of Sunita to the family of Sanjiv. (It is pertinent to note that it is not specifically alleged in the complaint that as to which family member of Sanjiv, the aforesaid sum of Rs.5 lakhs was entrusted)

B. On 13.7.94, Sunita's father-in-law and Jeth Satish demanded a sum of Rs.51,000/- from the father of Sunita.

C. On 14.7.94 i.e. on the day of Tikka ceremony, father of Sunita gave all the dowry articles as demanded by the Sanjiv's family members including the sum of Rs.51,000/- to the family of Sanjiv. (Again, it is not specifically alleged that which family member was entrusted with the afore-mentioned dowry articles)

D. On 17.7.94, Sanjiv and Sunita entered into a matrimonial alliance.

E. As per the complaint, the problems started right from the day of the marriage.

F. On 17.7.94, when Sunita reached in-laws' house at Kasganj, U.P. she was taunted and abused by her Jethanis (Preeti, Shalini and Rajni) for bringing less dowry. Later on, her mother-in-law also abused her for showing disrespect to the Jethanis and she was beaten by all four of them including her father-in-law and husband.

G. On 31.8.94, the husband Sanjiv went to U.S.A and left Sunita at her parents' house.

H. On 11.7.95, Sanjiv returned from U.S.A and took Sunita to his in-laws' house at Kasganj. At Kasganj, Sunita was harassed by Sanjiv and his family members. (It is noteworthy that the complainant has not specifically alleged

that as to which of the family members used to her harass her. It is further relevant to note that one Jeth Rajiv and his Preeti were staying at U.S.A and not at the house at Kasganj).

I. On 21.8.95, the complainant along with her husband Sanjiv and Jethani Preeti went to U.S.A where she was harassed, beaten and was also not allowed to speak to her parents in India.

J. On 8.9.95, Sunita returned to India alone.

K. On 15.4.96, Sunita gave birth to a baby girl. It is alleged in the complaint that neither Sanjiv nor his family members came to give their best wishes to Sunita and her daughter. It is further alleged that Sanjiv demanded a flat in Delhi from the father of the Sunita and the said demand was satisfied.

L. Thereafter on 4.6.97 Sunita made her second visit to U.S.A along with husband Sanjiv and daughter. Again Sanjiv, his brother Rajiv and wife Preeti harassed Sunita. They further demanded a sum of Rs.40 lakhs for construction of a nursing home.

M. Since father of Sunita was not in a financial position to meet the said demand, Sunita was sent back to India. She returned to her parents' house in India on 2.11.97.

N. Sanjiv returned to India in June 1998 and again took Sunita to the house at Kasganj. At Kasganj's house, Sanjiv and his brother Satish harassed Sunita to such an extent that she decided to end her life by taking sleeping pills. Fortunately, her father reached in time and saved her life.

O. On 30.10.98, Sunita made her third visit to U.S.A along with her husband Sanjiv and daughter. Further, Sanjiv, her father-in-law and mother-in-law demanded a plot in India for a nursing home from Sunita's father. The said demand was fulfilled by Sunita's father. On 5.2.99, the couple returned to India.

P. Sunita's husband and his family members were still not satisfied and demanded for the construction of the nursing home. Sanjiv withdrew from the company of Sunita and left for U.S.A .

Q. Thereafter Sunita was residing at her parents house in Delhi. When she went to the house at Kasganj to collect her istridhan she was abused and beaten by her Jeth Satish, Sunil and their wives Rajni and Shalini respectively. They also refused to return her istridhan.

R. Sunita did not leave hope and tried to save her marriage by talking to her husband Sanjiv over the phone.

S. In January 2002, Sanjiv visited India but did not inform Sunita about his visit. Somehow Sunita learnt about Sanjiv's visit to India and went to house at Kasganj. There she found that her almira was broken and all her jewelery and valuable articles were missing.

6. The gist of the afore-noted complaint is that Sunita has made allegations of dowry harassment and illegal retention of istridhan against her husband and his family members.

7. Learned counsel for the petitioners submitted that all and sundry allegations has been levelled against the petitioners. That the present complaint is filed with a malafide intention of harassing the petitioners and that the present complaint and FIR is an abuse of process of court.

8. The question in the instant case is whether the allegations in the complaint disclose offences under Section 498-A and/or Section 406, IPC.

9. Section 498-A of the Indian Penal Code reads as under :-

**? Husband or relative of husband of a woman subjecting her to cruelty-
Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.**

Explanation - For the purpose of this section, ``cruelty'' means -

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.?

10. Under Explanation (a) the cruelty has to be of such a gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health.

11. Explanation (b) to Section 498-A provides that cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. Explanation (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet harassment by itself is not cruelty. Mere demand for property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that it is cruelty and this is made punishable under the section.

13. In the decision reported as Smt. Sarla Prabhakar Waghmare v State of Maharashtra and Ors 1990 (2) RCR 18, the Bombay High Court had observed that it is not every harassment or every type of cruelty that would attract Section 498-A IPC. Beating and harassment must be to force the bride to commit suicide or to fulfill illegal demands.

14. Similar view was taken by the Punjab and Haryana High Court in the decision reported as Richhpal Kaur v. State of Haryana and Anr. 1991 (2) Recent Criminal Reports 53 wherein it was observed that offence under Section 498-A IPC would not be made out if beating given to bride by husband and his relations was due to domestic disputes and not on account of demand of dowry.

15. While interpreting the provisions of Section 304-B, 498-A, 306 and 324, IPC in the decision reported as State of H.P.v Nikku Ram and Ors 1995 (6) SCC 219 the Supreme Court observed that harassment to constitute cruelty under explanation (b) to Section 498-A must have nexus with the demand of dowry and if this is missing the case will fall beyond the scope of Section 498-A, IPC.

16. It is thus clear from the reading of Section 498-A IPC and afore-noted judicial pronouncements that pre-condition for attracting the provisions of Explanation (b) to Section 498-A IPC is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the women without any nexus with the demand then such a cruelty will not be covered under explanation (b) to Section 498-A, IPC. It may be a cruelty within the scope of Hindu Marriage Act, 1955 as held by the Supreme Court in the decision reported as Shobha Rani v Madhukar Reddy AIR 1998 SC 121. In said case, it was observed that cruelty under

Section 498-A IPC is distinct from the cruelty under Hindu Marriage Act, 1955.

17. Section 406 of the Indian Penal Code reads as under :-

?Punishment for criminal breach of trust.--Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.?

18. Section 405 of the Indian Penal Code defines 'criminal breach of trust' as under :-

?Criminal breach of trust--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to

be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ``criminal breach of trust.?

19. The basic requirement to bring home the accusations under Section 405 is to prove con-jointly (1) entrustment and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.

20. In the decision reported as Raj Kumar Khanna v. State 95 (2002) DLT 147, the complainant had filed a complaint against her husband and his family members under sections 498-A, 406 read with section 34 of the I.P.C. Noting that there was no allegation of entrustment of any property against the father-in-law of the complainant, this Court quashed the FIR qua the Father-in-law. In the said decision, it was observed as under:-

?Admittedly neither the compliant nor the supplementary statement show any entrustment of any property to the petitioner. In the absence of entrustment question of criminal breach does not arise. Since there was no entrustment of any articles to the petitioner, therefore chances of ultimate conviction on this count are bleak. No useful purpose is going to be served by allowing the proceedings under Section 406 IPC to continue against this petitioner.....?

21. In the decision reported as Ms Anu Gill v. State and Anr. 92(2001) DLT 179, noting that there was no allegation of entrustment in the complaint, this court quashed the FIR against the married sister- in ? law (nanad) of the complainant under section 498-A and 406 of the I.P.C. While quashing the said FIR , it was observed as under:-

?To constitute the offence under section 406 IPC there must be clear and specific allegation that the accused was entrusted with some property or domain over it, by the complainant; that the accused has dishonestly misappropriated or converted the same to his own use or that accused refused to return back the articles when the same were demanded by the complainant. Perusal of the

allegations appearing against the petitioner do not show that the articles of istridhan were even entrusted to her. In the absence of the allegation of entrustment, question of misappropriation or conversion to her use does not arise. Thus the most vital ingredient to constitute the offence under section 406 IPC is missing. In view of the above, no case under section 406 IPC is spelt out against the petitioner.?

22. In the decision reported as Pehlad Kumar and Ors v. State of Haryana II(1992) DMC 259, a sweeping statement was made by the complainant that her istridhan was entrusted to the family of the husband. Holding that there was no specific allegation of entrustment against some of the family members, the Punjab and Haryana High court quashed the complaint and the consequential proceedings against the said family members. It was observed as under:-
?From these we find that while there are specific allegations about the entrustment of certain articles to the husband-Pehlad and mother-in-law, the allegations with regard to the entrustment to the other petitioners are general, vague and not specific. Though certain articles are enumerated, a sweeping statement has been made by the complainant that these articles have been entrusted to the other relations of her husband, namely father-in-law, her brother-in-law and wife of one of the brothers-in-law. The complainant has not specifically mentioned as to which item of dowry was entrusted to which of these other petitioners. Therefore, on such vague and general allegations it cannot be stated that the complainant has made out a prima facie case against any of the other petitioners than her husband and mother-in-law under Section 406, IPC?

23. In the present complaint, a sweeping statement has been made by the complainant that her istridhan was entrusted to the family of her husband. There are no clear and specific allegations about the entrustment of istridhan to any

of the present petitioners. Complainant has not specifically mentioned as to which item of dowry was entrusted to which of the present petitioners.

24. It has been alleged by the complainant that her dowry articles were lying at the house at Kasganj. The matrimonial house of the complainant was at U.S.A. where her husband was residing. Due to the strained relations between the parties, the complainant was constantly moving between Delhi, Kasganj and U.S.A. In all, she made three visits to U.S.A. for 18 days, 5 months and 3 months respectively. During rest of the time, she mainly stayed at her parents's house at Delhi and for a very short span at her in-laws's house at Kasganj. The normal presumption would be that the complainant either kept her dowry articles at her matrimonial house in U.S.A. or at her parents's house in Delhi. There was no occasion for the complainant to keep her dowry articles at her in-laws's house at Kasganj. In any case, the complainant has not stated with clarity as to which dowry article she kept where.

25. Keeping the interpretation of Section 498-A and 405 IPC in mind, it has to be seen whether the conduct of the petitioners as alleged by the complainant in her complaint dated 21.10.2002 amounts to misappropriation as

defined under Section 405 IPC and/or cruelty under Section 498-A IPC.

1.

Sanjiv (Petitioner no.1)

i. On the day of marriage, he had beaten and taunted complainant.

ii. Harassed complainant at matrimonial house in India.

iii. Harassed complainant at house in U.S.A.

iv. Demand of a flat in Delhi.

v. Harassed complainant at house in U.S.A. followed by demand of Rs.40 lakhs.

vi. Harassed complainant to such an extent that complainant attempted suicide.

vii Demand of plot.

viii Demand of money for construction of plot.

i. The allegations against him prima facie disclose an offence under Explanation (a) and (b) to Section 498-A.

ii. Allegations attract Explanation (a) for the reason it has been alleged that harassment was to such an extent which compelled the complainant to commit suicide and Explanation (b) for the reason that both the ingredients thereof i.e. demand and harassment are present.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to him.

2.

Nand Kishore, father-in-law (Petitioner no.2)

i. On the day of marriage, he had beaten and harassed complainant for bringing less dowry and showing disrespect towards jethanis.

ii. Demand of plot

i. Cruelty as alleged against the petitioner do not falls within the scope of either explanation (a) or (b)

ii. Though there are allegations of harassment, same are not having a reasonable nexus with demand of dowry. The said demand of plot was not followed by any harassment on part of the petitioner.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to him.

3.

Sushila Devi, mother-in-law (Petitioner no.3)

i. On the day of marriage, she had beaten and harassed complainant for bringing less dowry and showing disrespect towards jethanis.

ii. Demand of plot.

i. Cruelty as alleged against the petitioner do not falls within the scope of either explanation (a) or (b)

ii. Though there are allegations of harassment, same are not having a reasonable nexus with demand for dowry. The said demand of plot was not followed by any harassment on part of the petitioner.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to her.

4.

Satish, jeth (Petitioner no. 4)

i. Harassed complainant to such an extent that the complainant attempted suicide.

ii. Harassed complainant at the time when the complainant came to her matrimonial house to collect her istridhan.

i. Allegations prima facie attract Explanation (a) to Section 498-A.

ii. Allegations attract Explanation (a) for the reason it has been alleged that harassment was to such an extent which compelled the complainant to commit suicide.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to him.

5.

Rajni, jethani (Petitioner no. 5)

i. On the day of marriage, she had beaten and harassed complainant for bringing less dowry.

ii. Harassed complainant at the time when the complainant came to her matrimonial house to collect her istridhan.

i. Cruelty as alleged against the petitioner do not falls within the scope of either explanation (a) or (b) to Section 498-A IPC.

ii. Though there are allegations of harassment, same are not having a reasonable nexus with demand for dowry.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to her.

6.

Sunil, jeth (Petitioner no.6)

i. Harassed complainant at the time when the complainant came to her matrimonial house to collect her istridhan.

i. There are no allegations of cruelty/harassment against the petitioner.

ii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to him.

7.

Shalini, jethani

i. On the day of marriage, she had beaten and harassed complainant for bringing less dowry.

ii. Harassed complainant at the time when the complainant came to her matrimonial house to collect her istridhan.

i. Cruelty as alleged against the petitioner do not falls within the scope of either explanation (a) or (b)

ii. Though there are allegations of harassment, same are not having a reasonable nexus with demand for dowry.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to her.

8.

Rajiv, jeth (Petitioner no.8)

i. Harassed complainant at the house in U.S.A.

ii. Demand of Rs.40 lakhs followed by beating.

i. Allegations prima facie attract Explanation (b) to Section 498-A.

ii. Allegations attract Explanation (b) for the reason that both the ingredients thereof i.e. demand and harassment are present.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to him.

9.

Preeti, jethani (Petitioner no.9)

i. On the day of marriage, she had beaten and harassed complainant for bringing less dowry.

ii. Harassed complainant at the house in U.S.A.

iii. Demand of Rs.40 lakhs followed by beating.

i. Allegations prima facie attract Explanation (b) to Section 498-A.

ii. Allegations attract Explanation (b) for the reason that both the ingredients thereof i.e. demand and harassment are present.

iii. No case under Section 406 IPC is made out for the reason there are no allegations of entrustment of any dowry article to her.

26. In the decision reported as Ramesh and Ors v State of Tamil Nadu AIR 2005 SC 1989, the Supreme Court considered a complaint filed by the wife against her husband, her in-laws and husband's brother and sister under Sections 498-A and 406 IPC and Sections 3 and 4 of the Dowry Prohibition Act. After sifting through the allegations in the complaint, the Supreme Court quashed the complaint qua the sister and observed as under :-

?Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant-Gowri Ramaswamy. Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged

offences, viz., Sections 498-A, 406 of the I.P.C. and Section 4 of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time, i.e., between March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under Section 498-A or any other offence of which cognizance was taken. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the F.I.R. is that on some occasions, she directed the complainant to wash W.C. and she used to abuse her and used to pass remarks such as ``even if you have got much jewellery, you are our slave.`` It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made

against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible. Neither the F.I.R. nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.?

27. In view of the above discussion, it can be said that the allegations made in the present complaint do not prima facie constitute an offence under Sections 498-A IPC against petitioners nos 2, 3, 5, 6, and 7. Noting the fact that no specific allegations of entrustment of istridhan has been made in the present complaint, I hold that no offence under section 406 IPC has been made out against the present petitioners.

28. It is settled law that a complaint/FIR can be quashed when allegations made in the complaint/FIR do not prima facie constitute any offence or make out a case against the accused. (See the judgment of the Supreme Court in the decision reported as State of Haryana and Ors v Bhajan Lal and Ors JT 1990 (4) SC 650).

29. Accordingly, qua the petitioners nos. 2, 3, 5, 6 and 7, the aforesaid FIR and proceedings emanating therefrom under section 498-A IPC is ordered to be quashed. In so far as Section 406 IPC is concerned, aforesaid FIR and proceedings emanating therefrom is quashed against all the petitioners.

30. Petition is partly allowed in terms of para 29 above.

31. No costs.

October 12, 2007 PRADEEP NANDRAJOG
sl JUDGE