

CASE NO.:
Appeal (crl.) 1716 of 2007

PETITIONER:
ONKAR NATH MISHRA & ORS.

RESPONDENT:
STATE (NCT OF DELHI) & ANR.

DATE OF JUDGMENT: 14/12/2007

BENCH:
ASHOK BHAN & D.K. JAIN

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Criminal) No. 2516 of 2007]

D.K. JAIN, J.:

Leave granted.

2. This appeal by the three accused arises out of the order dated 5.3.2007, passed by the High Court of Delhi, dismissing the Criminal Revision Petition No. 92 of 1998 filed by them. In the said petition, a prayer was made by the appellants to quash the charge sheet and the consequential proceedings arising out of First Information Report (F.I.R) No. 155 of 1995, instituted in the court of Metropolitan Magistrate, New Delhi. Appellants No. 1, 2 and 3 are respectively the father-in-law, sister-in-law and the husband of the complainant.

3. A few facts, leading to the present proceedings and necessary to dispose of the appeal are:

The marriage between the complainant and appellant No. 3 was solemnized at New Delhi on 5.12.1993. After the marriage, the complainant was residing at her matrimonial home in Delhi. It appears that there was some matrimonial discord between the complainant and her husband, appellant No. 3, which resulted in filing of a complaint by the complainant on 17.5.1994 in the Crime against Women (#CAW# for short) Cell, Delhi, inter alia, alleging that she was harassed by her husband and in-laws. However, the matter was compromised on 26.6.1994 and as agreed, on 3.7.1994, the complainant joined her husband at Bijnore (U.P.), where he was posted. However, she returned back to her parental home in Delhi in mid-August 1994, as she was expecting a child.

4. On 8.11.1994, she lodged another complaint in CAW

Cell. The said complaint was the foundation for registration of F.I.R. No. 155 of 1995, alleging commission of offences by the appellants under Sections 498A, 406/34 of the Indian Penal Code (#I.P.C.#, for short). For the sake of ready reference, the same is extracted below:

#I, Neetu, d/o R.P. Dixit W/o Ashutosh Misra wish to inform you that as per compromise in the Cell on 22.6.1994 with my husband I went to Bijnore on 3.7.1994 on the suggestion of my husband I came to Delhi along with my parents on 12.8.1994 for delivery. I gave birth to a son on 4.9.1994. My husband came to hospital on 5.9.1994 and requested me to come to Bijnore after 40 days. He gave me no money for expenditure. When I left Bijnore he gave me only Rs.1/- only. I did not receive any phone from him till 7th November, 1994. Then I phoned him and told him that he was required to go to Cell on 28.10.1994. He told me that he has no time to go to Cell and to bring me to Bijnore. You can come to Bijnore if you apologize to my father. Keep him happy, obey my sister and talk to your father to give you Rs.50,000/- and VCR to bring with you. Then I can come to bring you. If you come here alone with the child, we will give you good beatings.

My husband came to Rajouri Garden every Saturday # Sunday in September # October and on Dushera & Diwali. This can be verified from neighbour Hira Lal and Smt. Nirmala Sharma, President Mahilla Jagriti Samiti. Almost 2 weeks ago, Hira Lal informed me that my husband took away all my belongings with him at 4 A.M.

In view of above facts, I think these three persons are conspiring. Therefore, I request that my case may be re-opened and my father-in-law, husband and sister-in-law may be punished.#

(emphasis supplied)

5. As noted above, on the basis of the said report, an F.I.R. was registered on 4.4.1995, wherein date and hours of occurrence was mentioned as 5.12.1993 to 12.8.1994. Before the registration of the F.I.R., another statement of the complainant was recorded wherein she alleged misbehaviour on the part of her father-in-law, appellant No. 1. In the said statement, she stated that, #my father-in-law and sister-in-law

clearly warned him that till the time I will not bring Rs.50,000/- cash and V.C.R. they will not keep me#. She also alleged that when she asked for return of the Stridhan, they refused to return the same #with fraudulent intentions#. After investigation by the CAW Cell, the charge-sheet was filed on 15.7.1995. In the charge-sheet, it has been recorded that despite issue of notice under Section 160 Cr.P.C. to the complainant and her father by the ASI, neither the complainant nor her father turned up to take back her Stridhan , which was alleged to be with the appellants. It has been noted that the complainant does not want to take back her Stridhan.

6. At the time of framing of charge, the Metropolitan Magistrate came to the conclusion that no case under Section 406 had been made out against any of the accused and further case under Section 498A was also not made out against the father-in-law and sister-in-law, being appellants No. 1 and 2. Accordingly, he discharged all the appellants for offences under Section 406 I.P.C. and appellants No. 1 and 2 for offences under Section 498A I.P.C.

7. Against the said order, the State preferred Revision Petition to the Sessions Court. Vide order dated 24.1.1998, the Additional Sessions Judge came to the conclusion that a prima facie case under Sections 498A and 406 I.P.C. was made out against all the appellants. Accordingly, he directed the trial court to proceed with the case against all the appellants under Sections 498A/406/34 I.P.C. and frame the charges accordingly.

8. Being aggrieved, the appellants filed a Criminal Revision Petition before the High Court. As noted above, the said Revision Petition was dismissed. It is this order of the High Court, which is questioned in this appeal.

9. Appellant No. 1, appearing in person, argued the case on behalf of all the appellants. It was vehemently contended that the Additional Sessions Judge as well as the High Court have failed to appreciate that the first complaint dated 8.11.1994 lodged by the complainant on the CAW Cell, which was the foundation for the registration of F.I.R. No. 155 of 1995, did not contain any allegation of demand of dowry or harassment by appellants No. 1 and 2. It was submitted that even if the allegations in the statement of the complainant dated 4.4.1995 are taken at their face value, yet the appellants cannot be connected with offences under Sections 406 or 498A I.P.C., particularly when admittedly after 3.7.1994, when she joined her husband at Bijnore, she had never lived with appellants No. 1 and 2. It is asserted that the said statement was an after thought, made after almost 8 months of the alleged occurrence.

10. Learned counsel appearing on behalf of the complainant

and the State supported the view taken by the High Court.

11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

12. In *State of Karnataka Vs. L. Muniswamy*, a three judge Bench of this Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasized.

13. Then again in *State of Maharashtra and others Vs. Som Nath Thapa and others*, a three judge Bench of this Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relating to trial of warrant cases; and (iii) Sections 245 (1) and (2) qua trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus:

if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

14. In a later decision in *State of M.P. Vs. Mohanlal Soni*,

this Court, referring to several previous decisions held that the crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

15. Having noted the broad guidelines to be kept in view while deciding whether or not a charge against the accused is to be framed, we may advert to the facts of the present case to decide whether on the basis of the material placed before the trial court, it can reasonably be held that a case for framing charges against the appellants under Sections 498A and 406 I.P.C. exists. However, before undertaking this exercise it would be apposite to briefly note the essential ingredients of Sections 406 and 498A I.P.C.

16. According to Section 405 I.P.C., the offence of criminal breach of trust is committed when a person who is entrusted in any manner with the property or with any dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or wilfully suffers any other person so to do. Thus in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. (See: The Superintendent & remembrancer of Legal Affairs, West Bengal Vs. S.K. Roy)

17. The term #cruelty#, which has been made punishable under Section 498A I.P.C. has been defined in the Explanation appended to the said Section, to mean: (i) 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 (ii) 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. Therefore, the consequences of ##cruelty#, which are either likely to drive a woman to commit suicide or to cause grave injury, danger to life, limb or health, whether mental or physical of the woman or the harassment of a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand are required to be established in order to bring home an offence

under Section 498A I.P.C.

18. In the present case, from a plain reading of the complaint filed by the complainant on 8.11.1994, extracted above, it is clear that the facts mentioned in the complaint, taken on their face value, do not make out a prima facie case against the appellants for having dishonestly misappropriated the Stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable under Section 406 I.P.C. It is manifestly clear from the afore-extracted complaint as also the relevant portion of the charge-sheet that there is neither any allegation of entrustment of any kind of property by the complainant to the appellants nor its misappropriation by them. Furthermore, it is also noted in the charge-sheet itself that the complainant had refused to take articles back when this offer was made to her by the Investigating Officer. Therefore, in our opinion, the very pre-requisite of entrustment of the property and its misappropriation by the appellants are lacking in the instant case. We have no hesitation in holding that the learned Additional Sessions Judge and the High Court erred in law in coming to the conclusion that a case for framing of charge under Section 406 I.P.C. was made out.

19. As regards the applicability of Section 498A I.P.C., in the complaint dated 8.11.1994 there is not even a whisper of a wilful conduct of appellants No. 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498A read with Explanation thereto. The complaint refers to the talk the complainant purports to have had with her husband, appellant No. 3, who is alleged to have told her to come to Bijnore if she apologizes to his father; keeps him happy; obeys his sister and talks to her father (complainant#s) to give her Rs. 50,000/- and V.C.R. and brings these articles to Bijnore. We are convinced that the allegation of misbehaviour on the part of appellant Nos.1 and 2 and the demand of Rs. 50,000/- and V.C.R. by them made by the complainant in her subsequent statement, dated 4.4.1995, was an after thought and not bona fide. Section 498A I.P.C. was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. Having carefully glanced through the complaint, the F.I.R. and the charge-sheet, we find that charge under Section 498A I.P.C. is not brought home insofar as appellant Nos. 1 and 2 are concerned.

20. Consequently, we allow the appeal partly; quash the charge framed against all the appellants under Section 406 I.P.C.; quash the charge framed against appellant Nos. 1 and 2

under Section 498A I.P.C. and dismiss the appeal of appellant No. 3 against framing of charge under Section 498A I.P.C. Needless to add that the trial court shall now proceed with the trial untrammelled by any observation made by the Additional Sessions Judge and upheld by the High Court in the impugned order or by us in this judgment.