

**IN THE COURT OF SH. NARESH KUMAR MALHOTRA: ASJ-05 : WEST
DISTRICT, TIS HAZARI COURTS, DELHI**

CR No. - 97/14

ID No. 02401R0431152014

In the matter of :-

Ms. Sudha,
D/o Sh. Dev Raj,
r/o 48, Vidya Apartment,
Near Miyan Wali Nagar,
Paschim Vihar, New Delhi- 87

.....Revisionist.

VERSUS

1. State (NCT of Delhi)
2. Smt. Sushila Punhani,
W/o Late Chander Prakash Punhani,
R/o H. No. 7/102, Dharampura,
Bahadurgarh, Distt. Jhajjar, Haryana.

Also at:

Smt. Sushila Punhani,
W/o Late Chander Prakash Punhani,
C/o Sh. Sunil Kumar,
WZ-59A, Gali No. 10,
Krishna Park Extn., Tilak Nagar, Delhi.

3. Smt. Meenakshi Taneja,
W/o Sh. Vikrant Taneja,
r/o B-3/5, Jeevan Jyoti Apartment,
Sandesh Vihar, Pitampura, Delhi.
4. Sh. Vikrant Taneja,
S/o Sh. Inderjeet Taneja,

r/o B-3/5, Jeevan Jyoti Apartment,
Sandesh Vihar, Pitampura, Delhi
5. Smt. Anita Rani,
W/o Sh. Sunil Kumar,
r/o WZ-59-A, Gali No. 10,
Krishna Park Extn., Tilak Nagar, Delhi.
6. Sh. Sunil Kumar,
S/o Sh. Ramesh Chander,
r/o WZ-59A, Gali No. 10,
Krishna Park Extn., Tilak Nagar, Delhi.

..... Respondents.

DATE OF INSTITUTION : **08.09.2014**
DATE OF RESERVING THE JUDGMENT : **04.01.2016**
DATE OF DECISION : **04.01.2016**

JUDGEMENT

1. This is a revision petition filed by the petitioner against against order dated 10.07.2014 passed by the ld. MM. Vide which the ld. MM has ordered to discharge respondents no. 2 to 6.

2. Aggrieved by the order dated 10.07.2014 the complainant/ petitioner has filed the present revision petition on the ground that the husband of the petitioner was declared proclaimed offender by the Ld. MM. Ld. MM has committed an error which is apparent on the face of the record. Ld. MM has passed the order without appreciating the provisions of Section 239 Cr.P.C. Ld. MM has not appreciated the facts and also did not take into consideration the supplementary statement of the petitioner and came to conclusion that there are general allegations against the respondent nos. 2 to 6. Ld. MM has failed to

appreciate that there are specific allegations of harassment, beating and dowry demand against the respondents no. 2 to 6. Ld. MM has failed to appreciate that at the time of framing of charge, the court is not required to evaluate the material on record. It is prayed that order dated 10.07.2014 be set aside.

3. I have heard ld. Counsel for the petitioner, ld. Chief PP for the State and ld. Counsel for the respondents no. 2 to 6 at length and perused the record of this Court as well as Trial Court carefully.

4. Ld. Counsel for the petitioner has argued on the lines of the revision petition. On the other hand, ld. Counsel for the respondents no. 2 to 6 argued that the ld. MM has passed a reasoned order. There are no specific allegations of dowry demand against the respondents no. 2 to 6. There are only allegations of taunting and not of any demand of dowry articles. It is prayed that revision petition be dismissed.

5. Perusal of the file reveals that case was registered on the complaint given by the petitioner to the Joint Commissioner of Police. In this complaint it is no where mentioned that any of the respondents no. 2 to 6 had made any specific demand and the allegations are against her husband. There are also allegations against elder sister-in-law Rekha and her husband Bihari Lal. Ld. MM vide order dated 10.07.2014 has ordered to frame charge against Mukesh i.e. husband. There are specific allegations against husband, sister-in-law Rekha and brother-in-law

Bihar Lal. Perusal of the file further reveals that supplementary statements of petitioner were recorded on 29.03.2006 & 02.05.2004. In the complaint given to the Joint Commissioner of Police, there are no allegation of harassment and dowry demand against any of the respondents no. 2 to 6. There are allegation against respondent nos. 5 & 6 that they had thrown the gifts and they refused to accept them as the same were not as per their choice. There are allegation against the respondents no. 3 & 4 that they started fighting with the petitioner. They also stated to the petitioner that they are foreign returns and taunted the petitioner and further they demanded for change of gifts. I am of the view that these allegations cannot be construed as demand in view of Section 498-A IPC. The Ld. MM has rightly came to conclusion that all the allegations are general in nature. The counsel for the petitioner is not able to make out any allegation of harassment or dowry demand against the respondents no. 2 to 6.

6. It is admitted fact that marriage of the petitioner was solemnized on 20.06.2002 and complaint was filed on 11.11.2003. It is also admitted fact that the marriage between respondents no. 3 & 4 was solemnized in the year 1999 and marriage between respondents no. 5 & 6 were solemnized in the year 2000. It is also admitted fact that respondents no. 3 to 6 are not residing in the matrimonial house of the petitioner and they are residing separately after the marriage of the petitioner. It is true that no date, time and place has been given by the complainant when any demand was raised by the respondents no. 2 to 6.

7. The counsel for the petitioner has placed reliance on judgments AIR 1987 Supreme Court 773 titled as “State of Himachal Pradesh Vs. Krishan Lal Pardhan & Ors.” and IX (2012) SLT 26 titled as “Sheoraj Singh Ahlawat & Ors. Vs. State of U.P. & Anr.” but these judgments are not helpful to the present case.

8. Ld. Counsel for the respondents no. 2 to 6 has placed reliance on judgment titled as “Raj Kumar Khanna v. State (NCT of Delhi), 95 (2002) Delhi Law Time 147 (DB) wherein it was observed by the Hon'ble Delhi High Court that **“In order to attract the provisions of Section 498-A it is not every harassment or every type of cruelty that would attract the provision of Section 498-A. In this regard reliance can also placed on the decisions of Bombay High Court titled Smt. Sarla Prabhakar Waghmare v. State of Maharashtra, (supra) and Rajanimal and Ors. v. State, (supra), wherein it was observed that cruelty by itself without demand would not be sufficient to bring home the guilt under Explanation (b) of Section 498-A, IPC. Harassment by itself is not a cruelty unless there is a demand of dowry and the cruelty is a consequence of that demand.**

Ld. Counsel for the respondents no. 2 to 6 has placed reliance on judgment titled as “Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & Anr., I (2008) DMC 265 (SC) wherein it has been observed by Hon'ble Supreme Court that **“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 provisions should not be used as a**

device to achieve oblique motives.”

Ld. Counsel for the respondents no. 2 to 6 has also placed reliance on judgment titled as “Shakson Belthissor v. State of Kerala & Anr., 2009 (3) JCC 2233 wherein the Hon'ble Apex Court observed that “In the light of the aforesaid language used in the Section, the provision would be applicable only to such a case where the husband or the relative of the husband of a woman subjects the said woman to cruelty. In order to understand the meaning of the expression 'cruelty' as envisaged under Section 498-A, there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.”

Ld. Counsel for the respondents no. 2 to 6 has also placed reliance on judgment titled as “Chander Kanta Lamba v. State & Ors., 2010 (1) JCC 610, where it is held that **“it is highly improbable to assume that the married sisters of the husband of the complainant who got married much prior to the marriage of the complainant and were living in their own matrimonial homes would come down simultaneously to the matrimonial home of the complainant and subject her to demand of dowry and the consequent cruelty.** Therefore, on this ground itself, I feel that the charge against the present petitioners is not prima facie made out nor is any 'grave suspicion' to have summoned such an offence available on record to put them to trial.”

Ld. Counsel for the respondents no. 2 to 6 has also placed reliance on judgment titled as “Hans Raj Sharma & Ors. v. State Govt. of NCT of Delhi, 2012

(2) JCC 972, where it is held that “The expression 'harassment' has not been defined in Section 498-A of IPC, but its dictionary meaning is to subject someone to continuous vexatious attacks, questions, demands or other unpleasantness, etc. But, it is not harassment of every nature which is punishable under Section 498-A of IPC. **In order to attract criminal liability, there should be torture physical or mental, positive acts. Such acts should be aimed at persuading or compelling the woman or her relatives to meet an unlawful demand of any property or valuable security or it should be actuated by the failure of the woman or her relative to meet such a demand.**”

9. In view of the above discussions, I am of the view that there is no infirmity, illegality, impropriety or inaccuracy in the impugned order dated 10.07.2014 passed by the Ld. MM. The revision petition filed by the petitioner is without any merits and same is hereby dismissed.

Copy of this judgment be sent alongwith the TCR.

Revision file be consigned to Record Room, after necessary compliance.

Announced in the open Court
on 04.01.2016

(Naresh Kumar Malhotra)
ASJ-05 (West)/THC/Delhi