

Delhi District Court

State vs Prem Kumar (Brother In Law) on 30 April, 2013

Author: Dr. Kamini Lau

IN THE COURT OF Dr. KAMINI LAU: ADDL. SESSIONS JUDGE-
II (NORTH-WEST): ROHINI COURTS: DELHI

Crl. Revision No. 37/2013

State

(Through PP Delhi)

..... Revisionist

Versus

1. Prem Kumar (Brother in law) S/o Udai Chand
2. Kamal Kumar (Brother in law) S/o Udai Chand
3. Praveen Kumari (sister in law) D/o Udai Chand
4. Rahul Kumar (Brother in law) S/o Udai Chand
5. Smt. Ruchika (Friend of Dewar) W/o Rahul Kumar
6. Smt. Chandrawati (Mother in law) W/o Udai Chand
7. Udai Chand (Father in law) S/o Inderjeet Singh

All R/o House No. E-5, Budh Vihar-I,
Sultanpuri, Delhi

..... Respondents

Date of Institution: 30.4.2013

Arguments heard on: 30.4.2013

Date of decision: 30.4.2013

ORDER:

This revision petition has been preferred by the State through Public Prosecutor Delhi seeking setting aside the order dated 21.2.2013 St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 1 of 10 passed by Ld. MM Ms. Rachna T. Lakhnupal thereby discharging all the accused persons except the husband in case FIR No. 1432/2004, under Section 498A/406/34 IPC, PS Sultan Puri. The present revision petition has been filed on the ground that the Ld. Trial Court had failed to appreciate the fact that there is specific allegation against all the accused that after marriage they started demanding dowry and harassed the complainant and when she refused for the same and that all the accused persons misbehaved with her and the husband also gave beatings to the complainant which fact is corroborated by Vinod Sharma in his statement under Section 161 Cr.P.C. It is pleaded that

the Ld. Trial Court has failed to appreciate that it was the complainant herself who can depose about the exact sequence of evidence as it happened and if the complainant would have given an opportunity to depose before the Court, she would explain the incident. It is further pleaded that the Ld. Trial Court failed to appreciate that there the Ld. Trial Court has failed to appreciate that there is specific allegation against the accused by the complainant and her mother Sharda Sharma that on 8.9.2004 they abused the complainant for bringing insufficient dowry and demanded a car and thrown her out of house after giving beatings to her.

Trial Court Record has been received. I have gone through the same and considered the submissions made before me. The complainant Smt. Pinky had filed a complaint against her husband □Kishan Kumar; father in law □Udai Chand; mother in law □Smt. Chandrawati; brothers in St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 2 of 10 law □Kamal Kumar, Prem Kumar & Rahul Kumar; sister in law (Nanand) □Parveen Kumari and friend of her brother in law namely Ruchika Kumari for the offence under Section 498A/406/34 IPC. It has been alleged by the complainant that after five□seven days of her marriage, all the accused persons started demanding dowry and when the complainant showed her mother's inability to pay, the accused misbehaved with her. She has also alleged that the husband of the complainant gave beatings to her and her brother in law and father in law misbehaved with her.

Before coming to the allegations made by the complainant in her complaint, I may briefly discuss the law relating to charge. In the case of Union of India Vs. Prafulla Kumar Samal reported in AIR 1979 Supreme Court 366 the Hon'ble Apex Court observed as under:

"..... The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case could naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 3 of 10 the accused.

In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced court cannot act merely as a Post□Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial....."

Further, in the case of Arun Vyas Vs. Anita Vyas reported in AIR 1999 Supreme Court 2071 the Hon'ble Supreme Court observed that:

"..... Section 239 has to be read along with S. 240 Cr. P.

C. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with S. 240 Cr. P. C. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like S. 468 Cr. P. C., the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed in a case where the Magistrate takes cognizance of an offence without taking note of S. 468 Cr. P. C., the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 4 of 10 trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify....." Applying the settled principles of law to the facts of the present case, it is evident that there are specific allegations against husband Kishan Kumar but in so far as the other accused / respondents before this Court are concerned (i.e. Prem Kumar, Kamal Kumar, Praveen Kumari, Rahul Kumar, Smt. Ruchika, Smt. Chandrawati and Udai Chand), the allegations against them are general and vague. No specific allegations of demand of dowry with date or occasion has been mentioned in the complaint. I may observe that complainant has resided at her matrimonial home after her marriage for about 12 days and she has tried to rope in as many relatives of the husband / accused whom she can, so much so that she even did not spare the lady friend of her brother in law (Dewar). It is beyond comprehension as to how a lady friend of one of the brother in laws (Devar) could be interested in demanding dowry from her. The allegations against the respondents are non specific and vague and the complainant has not specified as to what was demanded and by whom the demand was made. Further, she has alleged that all the respondents misbehaved with her but she did not even specify that out of the three brothers in law, which of the brother in law misbehaved with her and in what manner. The complainant has mentioned an incident of 08.09.2004 when she went to her matrimonial home on coming to know of accident of St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 5 of 10 her mother in law, she was not allowed to enter because of non fulfillment of demand of car. She had not specified as to who made this specific demand of car. The allegations made do not even fulfill the test of probability and credibility. The Ld. MM has rightly held that on the basis of general and vague allegations the provisions of Section 498A IPC would not apply on the accused/ respondents before this Court namely Prem Kumar, Kamal Kumar, Praveen Kumari, Rahul Kumar, Smt. Ruchika, Smt. Chandrawati and Udai Chand.

In so far as the provisions of Section 406 IPC is concerned, again the Ld. Trial Court has rightly observed that it has not been specifically alleged by the complainant that on which specific date and occasion which accused person was entrusted with dowry articles and Istridhan and has failed to mention any specific demand of return of dowry articles. In the absence of any specific entrustment no offence under section 406 IPC can be made out against the respondents since bald assertions

made in the complaint would not be sufficient to constitute offence U/s 406 IPC. No list of dowry articles prepared at the time of marriage has been filed along with the complaint. It appears improbable that dowry articles were given to the respondents together.

I am compelled to observe that Section 498A IPC in the recent years has become consummate embodiment of gross human rights violation, extortion and corruption and even the Apex Court of our country had acknowledged this abuse and termed it as Legal Terrorism. The St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 6 of 10 provisions of Section 498 A IPC are not a law to take revenge, seek recovery of dowry or to force a divorce but a penal provision to punish the wrong doers. The victims are often misguided into exaggerating the facts by adding those persons as accused who are unconnected with the harassment under a mistaken belief that by doing so they are making a strong case. Courts cannot be a party to any kind of exploitative situation and it is necessary for every complainant to remember that it is only an honest complaint which succeeds in law where contents are supported by facts on the ground and persons, who are not connected with the harassment, should never be arrayed as accused. The platform of the courts cannot be permitted to be used to wreck personal vendetta or unleash harassment and the tendency of the complainants to come out with inflated and exaggerated allegations by roping in each and every relation of the husband is required to be deprecated. The obligation of the court is to ensure that innocent persons are not put to harassment and to curtail the frivolous allegations at the earliest stage by looking for due corroboration from the facts. (Ref.: Savitri Devi Vs. Ramesh Chand & Ors., CRL (R) 462/2002 decided on 30.5.2003); Criminal Appeal No. 33941/05 datde 2.3.2010, Delhi High Court; Arjun Ram Vs. State of Jharkhand & Anr., 2004 CLJ 2989; Mukesh Rani Vs. State of Haryana, 2002 (1) RCR (Criminal) 163 and Anu Gill Vs. State & Anr., 2001 (2) JCC (Delhi) 86.

In any matrimonial dispute, it is the primary duty of every court to ensure that for any fault of the husband, his other relatives St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 7 of 10 including married sisters and brothers who may be living jointly or separately and the aged parents are not involved either out of vengeance or to curl out appropriate settlement.

In view of my above discussion, I find no illegality or infirmity in the order of the Ld. Trial Court dated 21.2.2013 thereby discharging the respondents Prem Kumar, Kamal Kumar, Praveen Kumari, Rahul Kumar, Smt. Ruchika, Smt. Chandrawati and Udai Chand of the offence under Section 498A/406 IPC there being no prima facie material against them.

Before ending, I my mention that the Hon'ble Delhi High Court has been repeatedly observing that the appeals / revisionist are being filed by the State in Routine without any application of mind and without evaluating the merits of the case either at the level of the prosecution or the level of competent authority granting the permission to file the same and as a result of these filing of appeals as a matter of routine the Courts who are already overburdened with the pendency gets over burdened by increasing unwarranted litigation. In this regard the Hon'ble Delhi High Court had issued necessary directions to the Secretary (Law), GNCT of Delhi for considering the issue on priority. Reference be made to the order dated 6.1.2012 passed by the Hon'ble Division Bench in Criminal Appeal No. 9/2012 in the case of 'State Vs. Rajiv Lochpal Pani & Anr.'; again in Crl. L.P. No.136/2012 & Crl. M.A. 3042/2012 dated 8.8.2012 in the case of 'State Vs. Naresh & Ors.' and

recently reaffirmed vide order dated 25.2.2013 in CrI. L.P. No. 223/2012 & CrI. M.A. No. 5269/2012 in the St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 8 of 10 case of 'State Vs. Ram Kishan & Ors.'. It appears that the repeated directions of the Hon'ble Division Bench are being contemptuously ignored and over looked by the Prosecution Department. I may observe that directions issued by the Hon'ble High Court cannot be ignored or over□looked and the compliance of the same is expected. Any indifference by the State cannot be permitted. Frivolous litigations which eat into the judicial time have to be curbed and it is necessary for the Courts to impose a heavy costs on the Routine Litigation being filed by the State for wasting public time where other important judicial work can be taken care off.

At this stage, the Ld. Public Prosecutor submits that due care would be taken in future by the Department so as to ensure the compliance of the directions of the Hon'ble High Court. I have considered the request made by the Ld. Addl. PP for the State and I may observe that the perusal of the police file shows that initially the case was declared unfit for appeal by Sh. Praveen Kumar APP with which the Addl. PP and the Chief PP (Outer District) were agreed. However, when the file was put up before the PP Delhi he declared the case fit for Revision only after which the present Revision Petition has been filed and this has been done despite the directions of the Hon'ble Supreme Court and Delhi High Court on the contrary.

Therefore, under these circumstances the present revision petition is being dismissed with cost of Rs.5,000/□to be deducted from the salary of the officer of the Prosecution Department responsible for St. Vs. Prem Kumar Etc., CR No. 37/12 Page No. 9 of 10 violating and ignoring the directions issued by the Delhi High Court. Copy of the order is directed to be placed before the Principal Secretary (Home), GNCT of Delhi for compliance under intimation to this Court.

Trial Court record be sent back along with the copy of this order. Revision file be consigned to Record Room.

Announced in the open court
Dated: 30.4.2013

(Dr. KAMINI LAU)
ASJ-II(NW)/ ROHINI