

07.03.2024

Present: Ms. Megha Malhotra, Ld. Counsel for revisionist.

Sh. Vivek Gupta, Proxy counsel for respondent no. 2.

Vide separate judgment of even date, order dated 20.03.2023 passed by Ld. MM (Mahila Court-02), East District, Karkardooma Courts, in case titled as “

FIR No. PS Pandav Nagar stands set aside.

Revisionists stands discharged in the case.

TCR be sent back along with copy of this order.

File be consigned to Record Room.

IN THE COURT OF SH. GAUTAM MANAN, ASJ-05- EAST
KARKARDOOMA COURTS DELHI

CNR No. DLET01-010986-2023

[REDACTED]

[REDACTED]

[REDACTED]

....Revisionist

Versus

1. **State**
through NCT of Delhi.

2. **Ms XY** ... Respondents

Date of institution of Revision : 26.08.2023
Date on which judgment reserved : 24.02.2024
Date of judgment : 07.03.2024

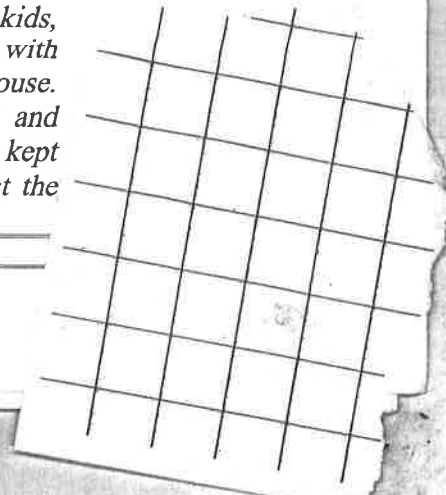
ORDER

1. Revision petition preferred by revisionist is directed against order dated 14.03.2023 passed by Ld. MM (Mahila Court-02), East District, Karkardooma Courts, in case FIR [REDACTED] titled as [REDACTED] [REDACTED] thereby Ld. Trial Court directed to frame the charge for the offence punishable U/s 498A/34 IPC against revisionists.

Brief Facts

2. FIR in question was registered on 30.04.2019 on the complaint of complainant dated 11.02.2019 which was made to CAW Cell, East District. Complaint lodged by respondent no.2 reads as under:

... The day I left the house under pressure was again an ugly morning when my husband [REDACTED] and his father [REDACTED] started abusing me in the morning when I was making breakfast in the kitchen for my kids. I kept on telling them to stop and go out of kitchen but [REDACTED] threatened me to put oil on my face which he has done earlier. He started abusing and hitting me pressing me badly telling me leave the home. I fell down got hurt and I left without taking anything. [REDACTED] and his parents [REDACTED] and his brother [REDACTED] have stopped me to come my house. They have done a lot of mental and physical abuse with me. There has been instances of Sexual abuse done by [REDACTED] and his parents were aware of it inspite of me complaining and requesting all of them, they were unheard and they say he being a husband can do this as it is his right. He has touched me inappropriately in front of the kids and maid many times inspite of my objections. He has awoken me during the night for sexual activity and has beaten me and his father has been staying in our house to keep a watch on me. His father has keen interest in knowing the sexual activity of me and my husband and my husband also use to talk to him about this and discuss. His father has also called me a whore and told his son of getting married again or going out for sexual pleasures as well. [REDACTED] has threatened me to kill me by throwing hot oil on me and strangling me to death by pressing my neck in front of his father, my kids, maid. He has beaten me up multiple time and with all abuses has pressurized me to leave the house. All of them have used inappropriate word and filthy language against me and my family. I kept quiet and had borne all the filth not to affect the



family reputation and resolve things. I did not put any complaint anywhere earlier. He has thereafter to malign my image publicly and in front of my relatives and keeps threatening me to shut my mouth and bear his bad behavior, ill treatment, mentally, physically and sexually. He has badly beaten me multiple times. I have bled from mouth my eyes, scar on my face and arms. He has hit me with shoes. On and off he has slapped me strangled me by pressing my neck and hitting me. thereafter to kill me, touching me inappropriately. They all spy on me and threaten to malign my image publicly and life threatening words they said many times. I am scared for my life and for my kids life. My son is staying with them and they don't let me talk to him. He is unusual and shit in his pats as he is scared of his behavior. He was nervous while talking to me. I feel he gets scolded by them and might even be beaten if anything happens to him they all are responsible. All my financial documents and my valuable jewelery are in their custody and has not been given to me. They don't let me enter my house to my other things. Every time an issue is created whenever I ask for my things. I have a life threat from all of them for myself and my kids as they all are very influential. My kids have been traumatized with his behavior and have cried a lot and have been affected badly. My mental peace and health has been affected badly. The President [REDACTED] also threatened to break my house lock and interfere in my matter. I have locked the house with my key & lock which should not be broken.....

3. During investigations of the case, statement of respondent no.2 was also got recorded under section 164 Cr.P.C. Statement of respondent no.2 reads as under:

"My husband has been beating me brutally in front of my kids, his parents and multiple times. He has done unnatural sex with me and hurt me badly. Whenever, I have refused, he has threatened to kill

me by pressing my neck and to put hot oil on my face. He has also threatened me to call my parents and tell them that I do not sleep with him and I have relationship with other male. He has publically abused me with with cheap words like calling 'prostitute on the road and calling my mother 'Bar Dancer' and calling my brother 'Pimp'. All my belongings and kids belongings are in the house and he has not allowed me to take anything.

His father [REDACTED] his mother [REDACTED] [REDACTED] his uncle [REDACTED] his brother [REDACTED] his father [REDACTED] has also publically abused me and called me 'characterless' and has forcefully taken all things in her control and I had to leave the house to save my life. All of them are aware of the sexual abuse, physical abuse and mental abuse, my husband [REDACTED] has done with me. All of them have supported [REDACTED]

[REDACTED] I have gone through tremendous mental and physical harassment caused by the entire family and me and my kids [REDACTED] and [REDACTED] suffered a lot. [REDACTED] has maligned my image publically and has tried to even create scene at my work place. He has tries to contact all people I know, and malign my image in front of them. He is very influential and I feel unsafe for myself and my kids because he can do anything to cause trouble to me. He has forcefully kept my son with him and has violated court order which is due for hearing. My kids have been traumatised to see his behavior wherein he has punched me in front of them, pressed my hips multiple times. He had put his hands multiple times inside my t-shirt in front of my kids to threaten me to listen to him. His father [REDACTED] he purposely stayed in my house to ensure that the kids are not sleeping with me, so that [REDACTED] can physically have sexual intercourse. On complaining to his mother [REDACTED] she said supporting her son, because he is husband, he has all the rights to do anything [REDACTED] and his parents have also traumatised my kids by constantly poisoning their minds about me by saying I have slept with others and by use of foul language, calling me prostitute,

रखेले, रही. They all have beaten me publically, for which

complaint is registered with police station. All my financial documents. education documents, valuable accessories and all other belongings are in [REDACTED] and his parents' custody, including my gold and diamond jewellery. List has already been submitted in police record."

4. On completion of investigations, revisionists no.1 & 3 were charge-sheeted for the offence punishable under section 498A/406/506/34 IPC and revisionist no.2 for the offence punishable under Section 498A/406/506/509/34 IPC.

5. Vide impugned order dated 14.03.2023, Ld. Trial Court directed that the charge for the offence punishable under Section 498A/34 IPC framed against revisionist.

Grounds for Revision

6. Impugned Order is assailed on behalf of revisionist on the ground that Ld. Trial Court has totally failed to consider and appreciate the material fact that the allegations made in the FIR do not satisfy the requirements/ conditions precedent of the two main limbs of the offences under Section 498A IPC.

7. It is submitted that respondent no. 2 has not made any specific allegation against revisionists the FIR nor has she placed on record any substantial proof of any willful

conduct on their part which was of such nature as was likely to drive the respondent no. 2 to commit suicide or to cause grave injury or danger to life, limb and neither any satisfactory proof has been placed on record which demonstrates that revisionists inflicted upon the respondent No. 2 any kind of harassment with a view to coerce her to meet any unlawful demand for dowry or on account of failure by her or any person related to her to meet such demands.

8. Revisionists have contended that Ld. Trial Court has totally failed to consider and appreciate even if the entire material of judicial record is taken at their face value, the same will give exclusive conclusion and inferences that no case is made out under the alleged sections. It is stated that no date, time and event mention of any incident of cruelty, beatings or hurt caused to the respondent No. 2 by revisionists.

9. It is submitted that Ld. Trial Court has totally failed to consider and appreciate the material fact that the respondent No. 2 has alleged in her complaint that revisionists herein have called the respondent no. 2 'characterless' and has forcefully taken the control of all the things belonging to the respondent no. 2 rather the fact is that respondent no. 2 has herself left the matrimonial home.

10. In support of their contentions, revisionists among other cases, have also relied upon cases decided by in Hon'ble High Court Of Delhi in CRL.M.C. 7262/2006 titled as *Smt. Neera Singh Vs State (Govt. of NCT of Delhi) & Ors, Ran Singh and Anr. Va State of Haryana and Anr, decided by Hon'ble Apex Court, judgment of Hon'ble Punjab & Haryana High Court in Devi Lal & Ors. Vs State of Haryana and Kahkashan Kausar @ Sonam Vs State of Bihar, 2022 LiveLaw (SC) 141* wherein Hon'ble apex Court observed that:

"Incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives".

11. It is stated that the allegations made by respondent no.2 in the FIR are not directed against revisionists as such, Ld. Trial Court fell in error in directing to frame the charge against the revisionist for Section 498A/34 IPC.

Respondent's Version

12. On behalf of respondent no.2, it is submitted that allegations against the revisionist are specific against revisionists. It is stated that at the time of framing of charge defense of the revisionists cannot be looked into. It is submitted that in view of law laid down by Hon'ble Apex Court in *Veena Mittal Vs State of UP & Ors, Crl Appeal No.122/2022, Rajeev Kourav Vs Baisahab & Ors (2020) 3 SCC 317, Bhaskar Lal Sharma & Anr Vs Monica & Others (2014) 3 SCC 383*, and in view of the specific allegations against the revisionist, Ld Trial Court has passed a well reasoned order to frame the charges against revisionists.

13. I have heard rival submissions and I have gone through the Trial Court record.

Analysis

14. Allegations under Section 498A IPC: Section 498A IPC reads as under:

498-A. 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 purposes 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.

15. Hon'ble Supreme Court of India in Charan Singh alias *Charanjit Singh Versus State of Uttarakhand* 2023 SCC OnLine SC 454 in para 11 held as under:

11. The interpretation of Sections 304B and 498A IPC came up for consideration in Baijnath's case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:

"25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

- (i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and
- (ii) is within seven years of her marriage, and
- (iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

- (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), 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

16. Above authoritative judgment makes it clear that to constitute an offence punishable under section 498A there must be an allegation of cruelty or harassment by the husband or any his relative for or in connection with any demand of dowry.

17. Respondent no.2 is married since 2008 to the son of revisionist no. 1 & 2 and brother of revisionists no.3. For first time complaint has been made in 2019 that is after 11 years of marriage. In entire body of complaint there is not even a single incident which indicates that there was any specific demand of dowry from the revisionists or she treated with cruelty by the revisionist owing to demand of dowry. In statement recorded under section 164 Cr.P.C, respondent no.2 did not make any allegation against

revisionists for demanding any dowry or revisionist treating him with cruelty for non fulfillment of any such demand.

18. In *Kahkashan Kausar v. State of Bihar, (2022)*

6 SCC 599 Hon'ble Apex Court held as under:

16. Recently, in *K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605]*, it was also observed that : (SCC p. 454, para 6)

“6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

.....

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by

this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.

19. As held by Hon'ble Apex Court, in present case well, respondent no.2 alleged that revisionists harassed her mentally. Furthermore, no specific and distinct allegations have been made against revisionists. No date, time or occasion has been mentioned as to when respondent no.2 was treated with cruelty for want of dowry. Revisionists have not been attributed any specific role in furtherance of the general allegations made against him. Allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes.

20. Allegations appearing against revisionists being general and not specific, does not warrant their prosecution and hence, revisionists are entitled to be discharged for the offence under Section 498A IPC.

Conclusion

21. Accordingly, order dated 20.03.2023 passed by Ld. MM (Mahila Court-02), East District, Karkardooma Courts, in case titled as " [REDACTED] [REDACTED] FIR No. [REDACTED] PS Pandav Nagar whereby Ld. Trial Court directed to frame the charge for the offence punishable u/s 498A/34 IPC against revisionist stands set aside. Revisionists stands discharged in the case.

22. In terms of Section 437(A) Cr.P.C revisionists are directed to furnish personal and surety bond in the sum of Rs.10,000/- for period of six months to the satisfaction of Ld Trial Court. Revision petition stands allowed. TCR be sent back along with copy of this order.

*File be consigned to Record Room.
Announced in the open court on 7th March 2024.*