

HIGH COURT OF DELHI

CORAM: HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

Date of Decision: 30.01.2024

CRL.M.C. 2437/2023 & CRL.M.A. 9285-86/2023, 11957/2023, 13557/2023, 13561/2023, 22091-92/2023

BHAWNA GROVER Petitioner

VERSUS

STATE GOVT OF NCT OF DELHI & ORS. Respondents

Legislation:

Sections 498A/406/327/380/382/386/420/506/34 of IPC, Protection of Women from Domestic Violence Act, 2005, Section 482 of the Code of Criminal Procedure, 1973

Subject: Petition filed under Section 482 Cr.P.C. challenging the discharge of Respondent Nos. 2 and 3 in a case involving marital discord, dowry demands, and harassment.

Headnotes:

Petitioner's Allegations Against In-Laws and Marital Harassment – Petitioner Bhawna Grover married to Sh. Nishant Grover, facing harassment from in-laws and respondents who are sister and brother-in-law of petitioner's husband - Allegations of dowry demands, deceit regarding husband's educational qualifications, and continuous harassment - FIR No. 130/2012 registered for offenses under Sections 498A/406/34 IPC [Paras 2-4].

Proceedings and Discharge of Respondents No. 2 and 3 – Chargesheet filed against accused including Respondents No. 2 and 3 - Discharge of Respondents No. 2 and 3 by learned Mahila Court challenged in present petition - Petitioner seeks restoration of witnesses dropped by trial court and further examination of a witness [Paras 4-8].

Arguments on Maintainability and Delay – Respondents argue non-maintainability due to delay of over 900 days in filing the petition against the discharge order dated 17.08.2020 - Petitioner's failure to challenge previous orders noted [Paras 9-10].

Analysis of Trial Court's Orders – High Court finds no illegality in Mahila Court's order dated 17.08.2020 discharging Respondents No. 2 and 3 - Observations on the role of Sessions Court and Mahila Court in framing charges [Paras 11-18].

Dropping of Witnesses and Examination of PW-2 – High Court sets aside order dated 29.03.2023 dropping two prosecution witnesses (CAW Cell) - Directs re-examination of PW-2, Inspector Bharat Bhushan, who had conducted the initial investigation [Paras 19-27].

Conclusion and Directions – Petition disposed of with directions to re-call witnesses for examination - Emphasizes that observations should not be construed as an opinion on the merits of the case [Paras 28-30].

Referred Cases: Not specified.

Representing Advocates:

Petitioner: Ms. Usha Mann, Mr. Vijayala M. Bhalla, and Mr. Virendra Singh

Respondents: Mr. Naresh Kumar Chahar (APP for the State), Mr. Anubhav Mehrotra, and Mr. Manoranjan Shaw for R-2 to 7.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT SWARANA KANTA SHARMA, J.

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks following prayers:

"a) call for the record of proceedings of FIR No.130/2012 (MC No.5551389/2016) pending before the learned Mahila Court-04 (West), Tis Hazari Courts, Delhi;

b) pass orders for summoning Respondents No.2 and 3 to face trial before the learned Mahila Court, Tis Hazari Courts, Delhi;

c) set aside the order dated 17.08.2020 (Annexure-P/1);

d) stay the proceedings pending in FIR No.130/2012 (MC No.5551389/2016) pending before the learned Mahila Court-04 (West), Tis Hazari Courts, Delhi till the disposal of this petition;

e) set aside the order dated 29.03.2023 passed by the learned trial court in FIR No.130/2012 and restore 2 prosecution witnesses of CAW Cell, dropped vide order dated 29.03.2023 on the basis of statement U/s 294 Cr.P.C. of the 2 accused;

f) restore the PW2 and further examination of PW2 discharged on 29.03.2023 by the learned trial court and allow further time to the prosecution for his examination after locating the police file;...”

2. Brief facts, leading to the filing of present petition, as disclosed by the petitioner are that she had got married to Sh. Nishant Grover (brother of Respondent no. 2 herein) on 16.04.2001 at Delhi and a son was born out of their wedlock on 10.02.2003. Ever since the marriage, the respondents herein, who are the sister and brother-in-law of petitioner's husband and the other accused persons had been causing harassment to the petitioner. It is stated that respondents no. 2 and 3 have a strong influence on the working of other family members of the in-laws of the petitioner. It is stated that in the year 2001, respondents no. 2 and 3, the husband and parent's in-laws of the petitioner and one Mr. Ravi Kharbanda, had conspired together and had deceived petitioner's parents while arranging the marriage between the petitioner and Sh. Nishant Grover and had misrepresented that he was a graduate whereas he was only 12th pass. On the other hand, the petitioner herein is a well-educated woman. As mentioned in the petition, it was well known to in-laws of petitioner as well as the respondents that the petitioner is the only daughter of her wealthy parents and thus they had demanded a car, besides other expensive electronic gadgets, articles, furniture and expensive gifts for themselves and their relatives. It is also stated that they all desired for performance of marriage functions in high class hotels/banquet hall or some expensive venue, so as to boost their image in their society. As alleged, the petitioner's parents had spent more than Rs. 45 lacs on the marriage of their daughter. Further, the petitioner's parents used to spend huge amount of money on all festivals and occasions including birth of child, and about Rs. 6 lakhs was given as cash on such occasions to the in-laws of petitioner. It is further the case of petitioner that her parents had also given expensive clothes, gold jewellery, silver cutlery, etc. to her and her in-laws. However, respondents no. 2 and 3 and the in-laws of petitioner used to continuously harass the petitioner and she had to suffer insult and humiliation due to ridiculing, demeaning and humiliating remarks of respondents and petitioner's husband and in-laws.

3. As stated, the petitioner had filed some complaints before the police, for her protection, on 28.07.2010, 30.11.2010 and 20.08.2011, and undertakings were given to the police by the husband and in-laws of the petitioner on 13.09.2011, assuring peaceful life to petitioner.

However, the petitioner was constrained to lodge a complaint to the police authorities and CAW Cell (West), Delhi, and thereafter, FIR No. 130/2012 was registered at Police Station Mianwali Nagar, Delhi for offence under Sections 498A/406/34 of Indian Penal Code, 1860 ('IPC') which is pending trial before the learned Mahila Court-04 (West), Tis Hazari Courts, Delhi. Petitioner had also preferred a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('PWDV Act') against the offenders.

4. After conclusion of investigation in the present FIR, chargesheet was filed before the learned Mahila Court against the accused persons for offence under Sections 498A/406/327/380/382/ 386/395/412/420/506/34 of IPC. *Vide* order dated 22.04.2019, passed by learned Additional Sessions Judge-03, West, Tis Hazari Courts, Delhi, all the accused were discharged under Sections 395/412 of IPC. Thereafter, the matter was sent to learned Mahila Court for proceeding further as per law, since the remaining offence were not triable by a Court of Sessions. Thereafter, *vide* impugned order dated 17.08.2020 passed by learned Mahila Court, the respondent no. 2 and 3 were discharged in the present case, and charges against other accused namely Nishant Grover, Shashi Grover and Vijay Grover were framed only under Sections 498A/406/506/34 of IPC.

5. Learned counsel for the petitioner argues that order on charge dated 17.08.2020 passed by the learned Trial Court is illegal, perverse and misconceived whereby the Court has discharged respondents no. 2 and 3 and has amended the charges of other three accused, directing the trial under Sections 498A/406/506/34 of IPC.

It is argued that respondent nos. 2 and 3 were wrongly discharged by the learned Trial Court *vide* order dated 17.08.2020 when their trial before the Court was confirmed by the learned ASJ, *vide* order on charge dated 22.04.2019, under Sections 498A/406/327/380/382/386/ 420/506/34 of IPC. It is stated that *vide* this order, the learned ASJ had discharged all the accused including respondent nos. 2 and 3 only under Sections 395/412 of IPC. It is, thus, submitted that the learned Trial Court was wrong in sitting on judgment and reviewing the order dated 22.04.2019 of learned ASJ to whom the learned Trial Court is subordinate.

6. It is also submitted that the learned Trial Court had not given any opportunity to the petitioner to address arguments on the point of charge and explain the allegations which were direct and specific, also against respondent no. 2 and 3, in the complaint dated 03.01.2012 as well as in FIR No. 130/2012. It is further submitted that proceedings on 17.08.2020 were

conducted through video-conferencing during the Covid-19 pandemic and it was practically not possible for the prosecution to refer to the court record or police file. Therefore, it is argued that the learned Trial Court had hurriedly passed the order dated 17.08.2020, in spite of a previous order dated 02.07.2020 wherein the learned Trial Court was reluctant to pass any order due to the prevailing conditions of Covid-19 pandemic. It is also stated that even the order dated 17.08.2020 was not sent to the petitioner in spite of directions to do so and the knowledge of the contents of this order was attained by the petitioner on 17.02.2023, only when certified copy of the order was received from the copying agency.

7. Another grievance of the petitioner is that the learned Trial Court on 29.03.2023 has recorded a misconceived and illegal statement without oath under Section 294 of Cr.P.C. on its own motion, without any request from the prosecution, of the two co-accused namely Nishant Grover and Vijay Grover (whereas the third accused Shashi Grover was absent) and thereafter, two material witnesses of CAW Cell have been dropped. It is argued that these witnesses need to be examined and are to be restored in the trial. 8. It is also contended that on 29.03.2023, PW-2 Inspector Bharat Bhushan could not give his statement for want of police file, and the learned APP had requested to defer the examination of this witness, but the same was declined by the learned Trial Court and PW-2 was discharged without giving further opportunity to the prosecution. It is argued that PW-2 needs to be examined and thus, the order for discharge of this witness by the learned Trial Court should be set aside.

9. Learned APP for the State submits that since the learned Sessions Court had discharged the accused persons only under Sections 395/412 of IPC, the learned Mahila Court was bound to frame charge against all the accused persons under remaining sections invoked in the chargesheet. Therefore, it is stated that order dated 17.08.2020 is incorrect in law.

10. Learned counsel for the respondent no. 2 and 3, on the other hand, states that the present petition is liable to be dismissed on the short point of non-maintainability due to filing of the same after a delay of more than 900 days, since the order impugned before this Court was passed on 17.08.2020, and the delay has not been explained adequately by the petitioner. It is also stated that petitioner has till date not challenged the order of either learned Sessions Court dated 22.04.2019 before this Court, or the order dated 17.08.2020 passed by learned Mahila Court before the Sessions Court. It is also argued that even otherwise, there is no infirmity in the order dated

17.08.2020 *vide* which the respondents herein were discharged due to lack of prima facie case against them. It is argued that the present petition is abuse of process of law since the petitioner is indirectly seeking several reliefs which she is not entitled to. Therefore, it is prayed that present petition be dismissed.

11. This Court has heard arguments addressed by both the parties, and has considered the material placed on record as well as the trial court record.

12. In the present case, chargesheet against accused Nishant Grover was filed before the learned Metropolitan Magistrate-04, West, Tis Hazari Courts, on 02.01.2015, and cognizance of the same was taken on 20.01.2015. On 14.07.2015, it was observed by the learned Metropolitan Magistrate that chargesheet in this case had been filed under Sections 382/386/395/412/420/506/34 of IPC, out of which Sections 395/412 were triable exclusively by Court of Sessions. Accordingly, the present case committed by the learned Metropolitan Magistrate to learned Sessions Court. The order dated 14.07.2015 reads as under:

“...The documents have already been supplied to the accused in compliance of Section 208 Cr.P.C. Copies are stated to be complete.

This is a case U/s 382/386/395/412/420/506/34 IPC. The offences U/s 395/412 IPC are exclusively triable by the Ld. Court of Sessions. Accordingly, case is committed to the Ld. Court of Session. Issue notice to the concerned PP regarding committal.

Accused is directed to appear before the Ld. District & Sessions Judge (West) on 21.07.2015.

Ahlmad is directed to send the file complete in all respect to the Court of Ld. District & Sessions Judge (West) immediately...”

13. Supplementary chargesheet against Ravi Kharbanda, Karun Khanna, Shweta Khurana, Vijay Grover and Shashi Grover was filed on 10.11.2016 and *vide* order dated 01.12.2016, it was directed to be clubbed with the main file, by the learned Sessions Court. 14. This Court has now gone through the contents of order dated 22.04.2019 passed by the learned Sessions Court. The order, in the second paragraph itself, reflects that the Court after committal of the case was dealing only with Section 395/412 of IPC, and the Court writes as under:

“2. The facts giving rise to the allegation qua Section 395/412 IPC about which I am seized at this stage are enumerating from the complaint made by complainant...”

15. The conclusion of the order also reveals that there is no confusion in the order, as the learned Sessions Court ends the order by observing as under:

“13. Therefore, in the present facts and circumstances, I am of the considered opinion that the material on record is not sufficient to frame the charge for commission of the offence under Section 395/412 IPC against the accused persons. Accordingly, the accused persons are discharged for commission of offence u/s 395/412 IPC.

14. The remaining offences for which the accused persons are charge-sheeted, i.e., 498A/406/327/380/382 /386/420/506/34 IPC are triable by the Court of Ld. Metropolitan Magistrate. Therefore, the present file be put up before the Ld. CMM, West on 30.04.2019 at 2.00 PM to proceed further in accordance with the provisions of law.

15. The accused persons are directed to appear before Ld. CMM, West, Delhi on 30.04.2019 at 2.00 PM...”

16. It appears from a bare perusal of order on charge dated 22.04.2019 that the learned Sessions Court was only examining the case to find out as to whether *prima facie* offence under Sections 395/412 of IPC was made out against the accused persons for the purpose of framing of charge, and all the observations made in the order also reflect towards the same.

17. Thus, it is clear that the learned Sessions Court had only considered as to whether session triable offences were made out or not against the accused persons, and no order was passed regarding the other sections i.e. 498A/406/327/380/382/386/420/506/34 of IPC *qua* which the Court had directed the accused persons to appear before the learned Magistrate, who was directed to proceed as per law. In case, the learned Sessions Court would have passed an order on charge *qua* Sections 498A/406/327/380/382/386/420/506/34 of IPC also, it would have written so not only in the order, but would have also directed the learned Magistrate to frame charges under relevant sections of law against the accused persons. Therefore, there is no illegality in the order passed by the learned Mahila Court on 17.08.2020, when after hearing arguments on charge on the remaining provisions of law, the Court had proceeded to discharge respondent no. 2 and 3, and frame charges against three accused persons for offence under Sections 498A/406/506 of IPC. Thus, the contention raised on behalf of petitioner that no order on charge afresh could have been passed by the learned Mahila Court since the learned Sessions Court had framed charges under all remaining sections of IPC, is without any merit.

18. As far as the challenge to order dated 17.08.2020, passed by learned Mahila Court, on merits is concerned, this Court notes that the order was passed about three years prior to the filing of present writ petition. The petitioner herein had failed to take any steps to challenge the said order before the learned Sessions Court. Though it has been contended before this Court that the petitioner could get a copy of the order only on 17.02.2023, it is unbelievable that despite the order being uploaded on the website of district court concerned, and despite petitioner and her counsel being present before the learned Mahila Court on several dates such as 04.03.2021, 03.03.2022, 21.05.2022, 07.06.2022, 18.07.2022, 06.08.2022, 27.08.2022, 09.09.2022, 15.10.2022, 05.11.2022, 24.12.2022, 07.01.2023, 13.01.2023, 21.01.2023 and 09.02.2023 for the purpose of recording of prosecution evidence, she was not aware as to what order on charge had been passed in the present case. Since the petitioner has failed to avail appropriate remedy available to her under law, for assailing order dated 17.08.2020 on merits, this Court is not inclined to interfere with the said order, in the present writ petition.

20. Another grievance of the petitioner is that the learned Mahila Court *vide* order dated 29.03.2023 has erroneously dropped two prosecution witnesses i.e. witnesses of CAW Cell on the basis of statement made by two accused persons. The relevant portion of order dated 29.03.2023 reads as under:

“...Vide separate statement made by accused U/s 294 Cr. P.C., he admits the registration of FIR as well as the proceedings before CAW Cell without admitting the contents of the same. Accordingly, witness mentioned at serial no.2 and 3 namely, W/SI Darshan and W/SI Sarla are dropped from the list of witness..”

21. The joint statement made by the accused persons reads as under:

“Joint statement of accused 1, Nishant Grover, S/o Vijay Grover, 2 Vijay Grover, S/o late Sh. Om Prakash, 3 Shashi Grover, W/o Vijay Grover, Rio M-280, Guru Harkishan Nagar, Paschim Vihar, Delhi (under Section 294 Cr.P.C.)

Without Oath

We are the accused in the present case. We voluntarily admit the genuineness of registration of FIR bearing No.130/12 without admitting its content, PS Mianwali Nagar, Complaint No.3/12 dated 3.1.12 before CAW Cell, the same is Ex.A2 (colly.) (1-7) various statements given in CAW Cell proceedings Ex.A3 (colly.) (1-16) without admitting content. We shall abide by our statement during the trial...”

22. Having taken note of the aforesaid order sheets, this Court is of the view that the learned Mahila Court has committed an error by dropping the witness no. 2 i.e. W/SI Darshan and witness no. 3 ASI Sarla who were to prove the contents of FIR and proceedings before CAW Cell respectively,

since as per the statement of the accused persons, they were not admitting the contents of the complaints and statements which were to be proved by the said witnesses. The victim has a right to prove the contents of the complaints and the fact that complaints were made with certain content on certain dates, which may be crucial to prove her case during the course of trial. Therefore, the order dated 29.03.2023 is set aside to the extent as discussed above, and it is directed that the witness no. 2 and 3 as mentioned in the main chargesheet be called for examination.

23. One more grievance of the petitioner, also pertains to order dated 29.03.2023, wherein the learned Mahila Court had discharged PW-2 without giving an opportunity to the prosecution to examine the said witness, even though the learned APP had requested to defer his examination for want of police file. In this regard, this Court has perused the statement of PW-2 Insp. Bharat Bhushan, which reads as under:

“PW-2 Statement of Insp. Bharat Bhushan No. D-4195, EOW Cell, Mandir Mars Delhi.

On SA,

On 01.06.2012, I was posted as SI at PS Mianwali Nagar. On that day, at the instruction of the SHO, the present matter was marked to me. Thereafter, I got transferred to PS Paschim Vihar (within 1-2 months) and I handed over the present case file to MHCR. The matter is too old and without going through with the police file, I can not mention the particular investigation done by me in the present matter.

Whatever I remember I wholly depose before the court.

(Ld. APP for the State requested the concerned court that the examination in chief has to be deferred till the availability of police file so that witness can refresh his memory and narrated the investigation done by him).

Declined. Reasons mentioned in the order sheet...”

24. It is crucial to note that PW-2 had deposed that he was posted as SI at P.S. Mianwali Nagar when the present case was marked to him and he had carried out the initial investigation in respect of present FIR. Thus, the witness who was the initial investigating officer in this case has been discharged by the learned Mahila Court, even when a request was made to defer his testimony as the police file was not available with the prosecution for refreshing his memory.

25. This Court takes note of the fact that it is an old case pertaining to the year 2012, and the victim, through the prosecution, has a right to examine all the witnesses to prove her case beyond reasonable doubt. Though the learned Mahila Court had mentioned in the aforesaid statement that the detail reasons for declining opportunity for examination of PW-2 were mentioned in the order sheet, the order sheet dated 29.03.2023 however merely records as under:

“..PW-2/Inspector Bharat Bhushan examined, cross-examined and discharged..”

26. Thus, no reasons were given by the learned Mahila Court as to why the request of learned APP, to defer the examination of PW-2 who had conducted the initial investigation in the present case since the police file was not traceable, was declined by the Court. Thus, this Court is of the opinion that the learned Mahila Court should have granted an opportunity to examine the witness i.e. PW-2 which was denied for no reasonable cause.

27. Accordingly, the order dated 29.03.2023 is also set aside to this extent and it is directed that PW-2 Insp. Bharat Bhushan shall be re-called for the purpose of his recording of evidence and examination before the Court.

28. In view of the aforesaid observations and directions, the present petition alongwith pending applications stand disposed of. 29. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case. 30. The judgment be uploaded on the website forthwith.

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