

Rizwana Khan vs Mohd Abbas & Anr on 7 April, 2025

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th April, 2025

CRL.M.C. 3873/2017, CRL.M.A. 11001/2022

RIZWANA KHAN

W/o Shri Mohd. Abbas

D/o Late Mr. Mohd. Usman Khan

Aged about 51 years,

R/o 2/7 A, Jangpura - A

New Delhi -110014

.....Petitioner

Through: Mr. Ehzaz Zafar and Mr. Akas

Tyagi, Advocates.

versus

1. MOHD ABBAS

Zakaria Shahid Industries,
Shahidabad Near Ganga Bridge,
Sambhal Road, Moradabad
Uttar Pardesh

2. THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Samar Khan and Mr. Abhishek

Bakshi, Advocates for R-1.

Mr. Utkarsh, Ld. APP for the State
with Insp. Asha P.S. CWC

Nanakpura.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition has been filed under Section 482 of Cr.P.C. to set aside the Order dated 29.04.2017 in Crl. Rev. 440191/2016 and the Order dated 12.10.2015 discharging Mohd Abbas, Respondent No. 1 of Offence under Section 498A & 406 IPC in FIR No. 198/2013 P.S. Nanakpura.

2. The Petitioner Rizwana Khan got married to the Respondent No. 1 Mohd Abbas on 14.07.2011 in a mosque according to Muslim rites and rituals. According to the Petitioner, Respondent no. 1 forced her not to disclose anything about their marriage to the family members and relatives of Respondent No. 1/Husband.

3. The petitioner had disclosed to Respondent No. 1 that she is a divorcee. Respondent No. 1 at the time of proposing to petitioner, told her that his wife is unwell and bedridden. He further told that he had 2 sons, one was settled in U.K. and the other was shifting to Nainital. After the marriage, with Respondent No. 1, the petitioner came to know that his first wife was quite hale and hearty.

and that he had five children. Somebody informed the family of the Respondent about his second marriage, after which his attitude changed and he started ignoring the Petitioner and torturing her physically and mentally. She was totally neglected by the Respondent and was deprived of getting the status of "wife" in the Society.

4. The Petitioner's maternal grandmother expired in 2012, and she inherited 3 diamond sets and 11 gold Ginnies, which she handed over to the Respondent on his request.

5. The Respondent did not provide the Petitioner with any matrimonial home and stayed with the petitioner at her aforesaid house, and soon started asking the Petitioner to transfer in his name, the House No.2/7A, Ground Floor, Jungpura A, New Delhi-14 that was gifted to her by her mother. Petitioner wrote several emails to the Respondent No. 1 deploring him not to harass and torture her by suddenly ignoring her, not picking up her phone, not replying the SMSs, etc. The family of Respondent No. 1 started calling her at odd hours and extending threats to her, because of which she went into depression and had to be treated by a Psychiatrist.

6. In an attempt to reconcile, the Petitioner filed a Complaint before CWC, Nanakpura, where Respondent No. 1 failed to appear. Subsequently, on this Complaint FIR No. 198/2013 dated 24.12.2013 under Sections 498A/406/34 IPC was registered. The Petitioner was hoping for reconciliation and therefore, did not include the details about Diamond sets, gold ginnies, and demand for transfer of the house in the complaint. The statement of the Petitioner was recorded under Section 161Cr.P.C. on 08.01.2014 and Final Report was submitted by the Police on 21.08.2014.

7. The Respondent No. 1 was discharged by Ld. MM on 12.10.2015 for offences under Sections 498A/406 IPC by observing that there is nothing in the Complaint to show that she was likely to be driven to commit suicide due to the conduct of Respondent No. 1. Ld. MM did not believe the statement given by the petitioner u/s 161 Cr.P.C. and further held that the allegation that the Respondent No. 1 took the 3 Diamond sets, by force do not fall within the definition of Criminal Breach of Trust under Section 406 IPC and cannot be held as an incident of cruelty within the meaning of Explanation A to Section 498A IPC.

8. Aggrieved by the Order, Petitioner filed Revision u/s 397 Cr.P.C. bearing CR No.440191/2016 before the Court of Special Judge, Dwarka Courts, New Delhi.

9. The Ld. Special Judge, in the Order dated 29.04.2017 concurred with the Ld. MM and held that the statement of the Complainant u/s 161 Cr.P.C. dated 08.01.2014 may give rise to suspicion, but is distinguished from grave suspicion. The Special Judge therefore, dismissed the Revision Petition.

10. Thus, present Petition has been preferred to challenge the impugned Orders dated 29.04.2017 and 12.10.2015 as not only illegal, improper and incorrect, but also contrary to law.

11. It is submitted that at the stage of framing of Charge, the Court only has to see whether there is sufficient material on record to frame the Charge, and both the Courts erred in ignoring the material

evidence to prematurely discharge the Respondent, without giving any opportunity to the Complainant and the State to prove the allegation in FIR and Statements under Section 161 Cr.P.C. by leading evidence.

12. It is submitted that the Ld. Trial Court has erred in presuming that there was no entrustment of Jewellery by the Petitioner to Respondent no. 1/Husband. Further, the primary oral evidence of the petitioner of existence of Jewelry as well as its entrustment to the Respondent no. 1 has been completely overlooked. Moreover, there was an incorrect assumption made that a person should have the photographs of their ancestral property, and is in complete disregard of the Oral Statement of the Petitioner.

13. The Ld. Courts erred in holding that allegation of physical and sexual abuse is not supported by medical evidence. The Courts further erred in holding that the Petitioner was subjected to mental cruelty and harassment just because she knew that this was the second marriage of the Respondent No.1 and she was his second wife.

14. It is thus, prayed that the impugned Order dated 29.04.2017 be set aside.

15. The Respondent No. 1 has vehemently contended the maintainability of the present Petition on the ground that second Revision is barred under Section 397 (3) Cr.P.C and Section 482 is to be resorted to sparingly only in a situation when there was an abuse of the process of law or the mandatory provisions of law were not complied with. The petitioner has already availed the remedy of first revision in the Sessions Court and there is no ground to sustain the present Petition.

16. On merits, Respondent No. 1 has denied that the petitioner handed over the said 3 diamond sets and 11 gold ginses to the Respondent on his request. It is stated that the Petitioner had made this allegation as an afterthought as the same was not mentioned in her Complaint dated 22.08.2013 before CAW.

17. It is submitted that at the stage of framing of Charge, the Court not only has to see whether there is sufficient material on record to frame the Charge, but also that whether the material and documents on record, disclose the existence of all the ingredients constituting the alleged offence.

18. It is further submitted that the court has rightly held that the incident regarding taking away of the 3 Diamond sets forcefully, cannot be termed as an incident of cruelty within the meaning u/s 498A IPC because the petitioner failed to provide any proof regarding the existence of such Diamond Sets. The petitioner has herself stated that she does not have any purchase bill, photograph or any other proof to show the existence of the said 3 Diamond Sets.

19. Further, there is not even a single word regarding physical beatings by Respondent no. 1 in any of the Complaints filed by the petitioner as well as in the FIR. That the allegations regarding the physical beatings, sexual abuse, and cruelty made subsequently in her statement under S.161 Cr.P.C. are an afterthought and not bonafide. The Medical documents submitted by the Petitioner to the Investigating Agency, did not support her allegations regarding physical beatings or any kind of

sexual abuse.

20. It is asserted that none of the documents as well as the material on record supported the allegations of the petitioner and thus, the Respondent has been rightly discharged.

21. It is stated that as per the Complaint dated 22.08.2013 and FIR, it is the case of the petitioner herself that she got married to the Respondent no. 1 despite knowing that the Respondent no. 1 is already married and was staying with his first wife and that the Respondent no. 1 did not want the families to know about the second marriage. Therefore, it cannot be said that the petitioner felt mentally harassed on account of neglect on the part of the Respondent no. 1, when he used to avoid her phone calls or avoid spending time with her and would not be covered under the definition of cruelty, as per section 498A IPC.

22. Moreover, it is a well settled that if two views are possible and one of them gives rise to suspicion as distinguished from grave suspicion, the trial judge is justified to discharge the accused.

23. Thus, it is stated that present Petition is liable to be dismissed and Order of Ld. ASJ to be upheld.

24. The formal Status Report has been filed giving the details of the Charge Sheet.

25. The Petitioner in rejoinder has denied the averments made by the Respondent No. 1 in her Reply.

26. The Parties were referred to mediation vide Order dated 13.12.2024, but the disputes could not be settled as per the Report dated 17.03.2025.

27. Submissions heard and record perused.

28. To appreciate the contentions of the Petitioner about she being subjected to cruelty and harassment, it would be pertinent to refer to Section 498A of IPC which reads as under :

498A. 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.

29. For establishing an offence under Section 498A IPC as held in U. Suvetha vs. State, (2009) 6 SCC 757, the following necessary ingredients are required to be satisfied:

a. The woman must be married;

b. She must be subjected to cruelty or harassment; and c. Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

30. As has been held in State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582, for the purpose of an offence under Section 498-A, harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property, etc. that it amounts to "cruelty" punishable under Section 498-A IPC.

31. Likewise, Section 406 IPC reads as under :

"406. Punishment for criminal breach of trust.-- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

32. The Apex Court considered the necessary ingredients to constitute a Criminal Breach of Trust under Section 406 of IPC in the recent judgment of Delhi Race Club (1940) Ltd. vs State of U.P., 2024 SCC OnLine SC 2248. While referring to the landmark judgment of S.W. Palanitkar vs State of Bihar, (2002) 1 SCC 241, the constituents of an offence of criminal breach of trust, were expounded thus:

a) There must be entrustment with person for property or dominion over the property, and

b) The person entrusted: -

I. dishonestly misappropriated or converted property to his own use, or II. dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

a. any direction of law prescribing the method in which the trust is discharged; or b. legal contract touching the discharge of trust.

33. In this backdrop, the facts of the present case may be considered.

34. The case of the Prosecution is that the Complainant made a Complaint in CAW Cell on 22.08.2013, wherein she in detail, narrated the circumstances in which she performed the marriage with Respondent No.1. She further detailed that it was the second marriage of Respondent No.1 who had given her an impression that his first wife was ailing and that he has two sons, out of whom one was settled in U.K and the other was going to settle in Nainital.

35. It is only after the marriage that she realized that wife was hale and hearty. She has further detailed that after marriage, she was not given due status of wife by Respondent No.1 despite her repeated requests. Consequently, when nothing succeeded, she made a Complaint in CAW Cell as well as in the NGO, Jagori.

36. She further claimed that despite all her efforts the Respondent No.1 has neither visited her nor replied to her letters, etc. She further asserted that she has been suffered mental harassment which is more criminal than physical abuse.

37. Marriage is an Institution where love, trust and respect are expected and not mental torture and abuse and that she was a victim on account of his continued humiliation and mental harassment. She thus, made the Complaint on which FIR dated 24.12.2013 under Section 498A/406/34 IPC got registered.

38. During the investigations, statement of Complainant under Section 161 Cr.P.C was recorded, wherein she stated that in April, 2013 Mohd. Abbas asked her to give the inherited three Diamond Sets to him as they were very beautiful and he intended to show it to his first wife Noori Sahar. When she refused, he assaulted and forcibly took away the three Diamond Sets. Despite his assurance that he would return them after 2-3 days, he has failed to return the Sets till date. Further, when he was confronted about returning the diamond sets, he told her to transfer the house in his name. He then beat her up.

39. She further asserted that Mohd. Abbas her husband sexually abused her many a times and forcibly raped her and committed unnatural sex without her permission and when she refused, he beat and abused her. He is not a respectable person and that "Lies, forgery, greediness have made him blind .

40. She further asserted that Mohd. Abbas and other family members have been extending threats through their employees and have been sending persons to keep an eye at her house. They are people of high profile with contacts with Ministers and IAS Officers and she has been told by Nasreen Rizwi (second wife of Accused's elder brother Mohd. Sajid Juned) that he can get anything done.

41. Pertinently, the initial Complaint of the Petitioner only detailed her disappointment at the Respondent No.1 not fulfilling his matrimonial obligations. She repeatedly stated that despite her requests, he has failed to discharge his obligations as a husband which has caused her mental

harassment which is more than physical assault.

42. In the entire Complaint, there is not a word about there being any dowry demands or of harassment connected to the dowry demands. There is also no cruelty alleged to have been committed upon her by the husband which could have driven her to harm herself. None of the ingredients of Section 498A were made out in her initial Complaint, as has been rightly observed by the Court of ld. MM and ASJ.

43. It is absolutely correct that FIR cannot be considered as a complete Encyclopaedia of entire facts and her subsequent statement under Section 161 Cr.P.C recorded about 15 days prior to registration of FIR, cannot be overlooked. It is for the first time in this statement she made the allegations that Respondent No.1 had forcibly taken away three diamond sets which she had inherited from her grandmother, on the pretext of showing them to his first wife, but he subsequently failed to return them. In contradistinction, in the present Petition it is stated that she had handed over her three Diamond Sets to the Respondent, on his request.

44. The allegations pertaining to the three Diamond sets have also emerged as a subsequent thought. Also, from her averments made in the present Petition as well as in the Charge Sheet, there is nothing to show that these diamond sets were demanded or given as part of dowry or that there was any entrustment of Diamond sets to the husband as mandated under S.406 IPC or that had been demanded by the husband as part of the dowry.

45. Likewise, her claim that she was asked to transfer the house in the name of the husband for return the diamond sets, also does not qualify as a cruelty or harassment as envisaged under Section 498A IPC.

46. The only averments made are of neglect and disregard to her, despite being the Second wife, which cannot be termed either as harassment on account of Dowry or such cruel behaviour so as to drive her to cause bodily harm.

47. Pertinently, she has made other allegations of physical abuse and unnatural sex, marital rape, but it is clearly evident that such subsequent allegations have been made, as an afterthought. Furthermore, none of these allegations fit in any of the clauses of Section 498A IPC.

48. The learned M.M. has rightly observed in his Order dated 12.10.2015 which has been upheld by learned ASJ that the allegations made by the Complainant do not prima facie disclose an offence under Section 498A/406 IPC and has rightly discharged the Respondents.

49. There is no merit in the present Petition, which is hereby dismissed along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA) JUDGE APRIL 7, 2025/va