

Delhi High Court

Sushila Devi vs State Nct Of Delhi & Anr. on 1 November, 2010

Author: A. K. Pathak

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IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 356/2006

% Judgment delivered on: 1st November, 2010

Sushila Devi Petitioner

Through: Ms. Seema Gulati, Adv

Versus

State NCT of Delhi & Anr. ... Respondents

Through: Mr. U.L. Watwani, APP & Mr.
Seeraj Bagga, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

Crl. M.A. No. 16516/2010 On 15th September, 2010 respondent No. 2 offered to the petitioner a sum of ` 14 lacs plus the amount lying deposited in the Court, towards full and final settlement of all her claims i.e. permanent alimony, istri-dhan, maintenance etc. subject to, however, her agreeing to obtain a decree of divorce by mutual consent. On 21st September, 2010 it was brought to the notice of this Court that this offer was acceptable to the petitioner. It was agreed that both the parties would withdraw cases which they had filed against each other. Present case was re-notified on 8th December, 2010 to enable the parties to take steps in this direction. On 21st October, 2010 the case was adjourned for today. In the meantime, respondent No. 2 has preferred this application. It is stated that their daughter had also filed a case under Section 20 of the Hindu Adoption & Maintenance Act, 1956 against the respondent No.2 thereby claiming a sum of ` 5,35,000/- towards the maintenance and marriage expenses. By this application respondent No. 2 seeks modification of the order dated 21st September, 2010 to the effect that the sum of ` 14 lacs plus a sum of ` 2 lacs already lying deposited in the Court shall also include the claim of their daughter. It has been

brought to my notice that daughter of the parties is since married and living with her husband and children. Counsel for the petitioner states that petitioner cannot settle the claim of her daughter, who is major and had been pursuing the legal remedy available to her independent of the litigation between the parties. This Court cannot direct any of the parties to settle their disputes in a particular manner. Offer of respondent No. 2, as contained in this application, is not acceptable to the petitioner. Accordingly, this application is, dismissed. Crl. M.C. 356/2006

1. Since settlement arrived at between the parties has failed, I have heard arguments on merits and by this order present petition is being disposed.

2. Petitioner is wife of respondent No. 2. She has filed this petition under Section 482 Cr.P.C. praying therein that the order dated 24th January, 2005 passed by the Metropolitan Magistrate, Delhi whereby she has been summoned under Section 500 IPC, be quashed and petitioner be discharged.

3. Briefly stated, facts of the case are that the petitioner and respondent No. 2 were married sometime in the year 1972 according to Hindu rites and ceremonies. On account of matrimonial discord between them, respondent No. 2 filed a divorce petition in the court of Additional District Judge, Delhi sometime in the year 1976. Later on, he withdrew the same in view of the settlement arrived at between the parties. It appears that their relations remained strained all along, which resulted in filing of three more divorce petitions by respondent No. 2 against the petitioner. However, from time to time these petitions were also withdrawn by the respondent No. 2, as the parties reached an amicable settlement during the pendency of the said divorce petitions. Lastly, in the year 1998 respondent No. 2 has again filed a divorce petition against the petitioner, which is still pending before the Additional District Judge, Delhi.

4. In the said divorce case, an application under Section 24 of the Hindu Marriage Act 1954 was filed by the petitioner, wherein maintenance of `1600/- per month was awarded to the petitioner by the Additional District Judge vide order dated 20th October, 1998. Respondent No. 2 filed an application under Section 151 of the Code of Civil Procedure dated 15 th January, 2001 seeking modification of the order of maintenance praying therein that the maintenance awarded be reduced. Petitioner filed reply to the said application on 5th February, 2001 wherein in para 6 she alleged as under:-

"6. That the application moved by the petitioner is apparently malafide as there is hardly any change in the circumstances in favour of the petitioner, on the other hand ever since the order for ad-interim maintenance has been passed the prices have increased manifold and it is absolutely impossible for a being to exist in a city like Delhi with meager amount of ` 1600/- p.m. and on the other hand, the salary of the petitioner has increased substantially and at present is not drawing a salary less than `15,000/- per month, besides the other benefits and advantages which he gets and derives being in the Income-tax Office."

5. Respondent No.2 being in Government service was occupying an official accommodation. Petitioner had also been living in the same house in spite of the fact that relations between the husband and wife remained strained and they continued to litigate in the court. After his retirement, respondent No. 2 had to vacate this official accommodation. Apprehending that she would be rendered homeless, petitioner filed a complaint under the Domestic Violence Act, 2005, wherein she has been granted `3500/- per month for separate accommodation.

6. It appears that sometime in the year 1987 petitioner had approached Crime Against Women Cell alleging cruelty at the hands of respondent No. 2 but no FIR was registered. Petitioner also appears to have made certain complaints to the superior officers of the respondent No. 2 sometime in the year 1980-81 alleging therein that she has been treated with cruelty by him. However, no action appears to have been taken by the department of respondent No.2 on these complaints.

7. As late as in the month of July 2002, respondent No. 2 has filed a complaint against the petitioner praying therein that the petitioner be summoned, tried and punished under Sections 499/500 IPC read with Sections 177/182/211 IPC. It was alleged that by filing false complaint with the superior officers of respondent No.2 she had defamed him in the eyes of his colleagues and staff. Petitioner also gave an interview on television on 24th October, 1981 levelling false and baseless allegations against the petitioner, consequently, reputation of the respondent No. 2 was lowered in the eyes of his relatives, friends and colleagues etc. After the police did not register a case under Sections 406/498-A/34 IPC on the complaint of petitioner, she got a news item published in the newspaper on 24.11.1987 criticizing the police and respondent no.2, pursuant whereof, respondent No. 2 was defamed. In her reply to the application under Section 151 CPC filed by respondent No. 2 also she made defamatory allegations that the respondent no.2 had been deriving certain benefits and advantages being in the Income Tax Office.

8. After recording pre-summoning evidence, Metropolitan Magistrate vide order dated 24th January, 2005 summoned the petitioner under Section 500 IPC, for the following reasons:

"I find sufficient grounds to summon the accused u/s 500 IPC, as the statement stating "being in the Income Tax office" suggests that some hidden meaning is imputed. Simultaneously mark CW1/1 the findings given by officer of the Income Tax office is also relied upon where as the complaint made to income tax officer by wife was filed which also suggest that by these complaints, his position was also lowered down in the eyes of colleagues. Thus accused be summoned u/s 500 IPC, accordingly, on filing PF/RC for 24-5-05."

(emphasis supplied)

9. I do not find the order of the Metropolitan Magistrate in consonance with the material available on record as also the law applicable thereto. The order is based on inferences. Nowhere in her reply, petitioner had suggested that the respondent no. 2 had been generating extra income by corrupt means. She has simply averred that respondent no. 2 had been drawing a salary not less than `15,000/- per month

besides the other benefits and advantages which he derives being in the Income Tax office.

Respondent no. 2 was a Government servant, thus, he would have been getting certain perks besides his monthly salary in the shape of telephone allowance, house rent etc. Mere use of words "besides other benefits and advantages which he gets and derives being in the Income Tax Office" by itself would not be sufficient to indicate that petitioner intended to impute that the respondent no. 2 had been earning money besides his salary, by using illegal means. Criminal liability cannot be fastened on a person by drawing inferences from the written or spoken words. Such an action is called for only if imputations are precise and specific. Thus, it cannot be said that ingredients of offence under Section 500 IPC were attracted in this case in view of the averments made in the reply. Similarly, petitioner's complaints made to the higher officers of respondent no. 2 that he had been treating her with cruelty would also not be sufficient enough to form a, prima facie, view that such complaints had been made by the petitioner in order to demean or lower down his position in the eyes of his superiors and colleagues. These complaints, moreover, appears to had been made about a decade prior to filing of the complaint.

10. In the present case, petitioner and respondent no. 2 were not keeping good relations almost for last three decades. The facts narrated above also clearly show that respondent no. 2 had been desperately trying to obtain divorce from the petitioner, inasmuch as, he had been filing divorce petitions right from 1976 onwards. As many as five divorce petitions had been filed. Lastly, he has filed a divorce petition in the year 1998 which is still pending. In this scenario, there is possibility of respondent no. 2 initiating criminal proceedings in order to exert pressure on the petitioner in the divorce case, more so, when alleged complaints were filed in the year 1980-81 but no action for defamation was taken till the year 2002.

11. As is evident that both the parties had been leveling allegations and counter allegations against each other. As per the respondent no. 2, it is the petitioner who had been treating him with cruelty; whereas petitioner alleges cruelty on the part of respondent no. 2. As per the petitioner, he had even not taken care of his daughter and did not spend any money on her marriage. Offspring of the parties, as already mentioned above, has also filed a petition under the Hindu Adoption & Maintenance Act, 1956 claiming from the respondent no.2, the expenses incurred on her marriage besides maintenance. Whether the petitioner has treated respondent no. 2 with cruelty or it is the respondent no. 2 who has treated her with cruelty is subject matter of trial in the divorce case. No finding has yet been returned in this regard. Thus, it cannot be said that petitioner had made false and frivolous complaints to the superior officers of respondent no.2.

12. Judgments Dr. J. Sudarshan Vs. R. Sankaran 1992 CRI L.J. 2427, M.A. Rumugam Vs. Kittu @ Krishnamoorthy (2009) 1 SCC 101 and Lalmohan Singh Vs. The King AIR (37) 1950 Calcutta 339, reliance whereupon has been placed by the counsel for respondent no. 2 do not advance his case any further being in the context of different facts. In M.A. Rumugam's (supra) case, a plea was taken by the accused that he had acted bonafidely and in good faith. In this context it was held that the plea taken was subject matter of trial. In Dr. J. Sudarshan's case (supra), offending passage was per se defamatory and in this context it was held that it was open to the respondent to choose to prosecute

the petitioner, irrespective of the pendency or the result of civil litigation. In Lalmohan Singh's case (supra) also, it was held that to say something about a person which holds him to contempt is defamatory.

13. Facts of this case are totally different. Petitioner and respondent No. 2 are husband and wife. They are at loggerheads and fighting out litigations in the court for the last three decades. Respondent No. 2 is desperately trying to obtain divorce from the petitioner. Fifth round of litigation, in this regard, is pending between them in the court of Additional District Judge. In this scenario, it appears that the present complaint has been initiated by respondent No. 2 in order to exert pressure on the petitioner in the divorce case and also with an ulterior motive for wreaking vengeance on the petitioner due to his personal grudge.

14. For the foregoing reasons, impugned order is set aside and complaint case filed by respondent No. 2 against the petitioner, pending in the court of Metropolitan Magistrate is quashed.

A.K. PATHAK, J.

NOVEMBER 01, 2010 rb