

Delhi District Court

Adesh Tanwar vs State (Govt Of N.C.T Of Delhi) on 11 January, 2012

Author: Sh.Rajeev Bansal

IN THE COURT OF SHRI RAJEEV BANSAL,
ASJ-03 (SOUTH DISTRICT), SAKET COURTS,
NEW DELHI.

Criminal Revision No. 24/10
(Unique No.02406R0305502010)

1. Adesh Tanwar
S/o Sh. Sube Singh Tanwar
R/o H. No. WZ-572/B-1,
Village Naraina,
New Delhi-110028
2. Sube Singh
S/o Late Sh. Ram Singh
R/o H. No. WZ-572/B-1,
Village Naraina,
New Delhi-110028
3. Smt. Kanta Devi
W/o Sh. Sube Singh Tanwar
R/o H. No. WZ-572/B-1,
Village Naraina,
New Delhi-110028
4. Dr. Ranu Tanwar
W/o Dr. Rajneesh Pawar
(D/o Sh. Sube Singh Tanwar)
R/o H. No. WZ-572/B-1,
Village Naraina,
New Delhi-110028
5. Ms. Shivani Tanwar
D/o Sh. Sube Singh Tanwar
R/o H. No. WZ-572/B-1,
Village Naraina,
New Delhi-110028

.....Revisionists

C.R No.24/10 Adesh Tanwar & Others vs. State & Anr.
Versus

1/26

1. State (Govt of N.C.T of Delhi)
2. Smt. Poonam Tanwar
D/o Sh. Satya Kumar
R/o C-66, Tigri Extension,
Near Sangam Vihar,

New Delhi

.....Respondents

Date of Initial Institution	:31.08.2010
Date of Institution in this Court	:27.09.2010
Date of Pronouncement	:11.01.2012

ORDER

1. This Revision Petition has been filed against the impugned Order dated 2.6.2010 by which the Ld. Trial Court has found a prima facie case u/s 498A/406/34 IPC against the Revisionists who are husband, Father in law, Mother in law, and two Sisters in law of Respondent No. 2 Poonam Tanwar.

2. It has been stated in the Revision Petition that the marriage of petitioner No.1 Adesh Tanwar and the C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 2/26 complainant/Respondent No. 2 Poonam Tanwar took place on 21.2.2003. It has been stated that Respondent No. 2 remained in the matrimonial society of the Petitioner No. 1 till 21.5.2004. It has been further stated in the Petition that the Respondent No. 2 became pregnant but she miscarried on 11.2.2004. On 4.2.2004, she was taken for pathological tests before delivery where it was revealed the Respondent No. 2 was suffering from communicable form of HSV positive virus on account of which differences arose between the spouses and she then left his society on 21.5.2004. He then filed a petition for divorce on 19.8.2004 and after service of summons on her, she filed a complaint in CAW Cell in September 2004 but ignoring the investigation report dt. 25.7.2005 of the CAW Cell, an FIR No. 775/05 u/s 498-A/406/34 IPC was registered against the petitioners. The Petitioners offered to return the Istridhan articles but she refused to receive the same and on an application of the Petitioners, the articles were deposited in maalkhana.

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3. It has been argued by the Ld. Counsel for the Petitioners that the complaint filed by the respondent No. 2 never disclosed any dowry demands except an allegation of demand of Rs. 5 lakhs and an Esteem Car. There is not even any allegation of entrustment of Istridhan articles. A perusal of the investigation report submitted by CAW Cell shows that the case was recommended to be registered only against the Petitioner No.1 right from the IO till the level of ACP, but the Ld. Trial Court, without even looking into the said report, directed framing of charges against all the Petitioners u/s 498-A/406/34 IPC. It has been stated that no case was found in the investigation report against the two sisters of Petitioner No. 1 but still charges have been directed to be framed against them as well. Regarding return of Istridhan articles, it has been stated that the complainant refused to accept them when offered by the petitioners and then the same were deposited in maalkhana with the leave of the court. There was no dowry demand by the Petitioners at any stage and there is no police complaint in this regard prior to filing complaint C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 4/26 in CAW Cell which too was filed as a counter blast to the divorce case filed by the Petitioner No. 1 against Respondent No. 2. Ld. Counsel has thus prayed for discharge of all the petitioners from charges u/s 498- A/406/34 IPC.

4. On the other hand Ld. Counsel for Respondent No. 2 has stated that the acts of cruelties meted out by the Petitioners on her were stated by her in detail in her complaint made to the CAW Cell. There was continuous demand of dowry by the Petitioners. She was asked to bring Rs. 5 Lakhs and an Esteem car. She was also given beatings by her Husband. So far as 'cruelty' is concerned, she was never given any proper medical aid. She was thrown out of the matrimonial house on 21.5.2004. The observations made by the CAW Cell were made by the unauthorized persons and were made only for the purpose of conciliation and hence, rightly they were not relied upon by the Ld. Trial court. So far as divorce case filed by the Petitioner No. 1 is concerned, the same was dismissed C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 5/26 by the concerned court holding that the Respondent No. 2 was not suffering from any Veneral Disease.

5. I have heard both the Ld. Counsels and have perused the trial court record and also the Petition. The basis of the FIR is the complaint made by the Respondent No. 2 to CAW Cell in September, 2004. The complaint was made against all the five petitioners. It was stated in this complaint that she married the Petitioner No. 1 on 20.2.2003 and the marriage was consummated on 21.2.2003. After 15-20 days, all the five petitioners started harassing her for dowry demand and pressurized her to bring cash of Rs. 5 lakh and a maruti Esteem car LXI model from her parents. She was taunted by all five petitioners for bringing insufficient dowry. All the petitioners gave beatings to her and asked her to bring more dowry. She was beaten mercilessly by all the petitioners and was made unconscious. Her both sisters-in-law used to taunt her for being not beautiful and that their brother had a number of proposals of girls for C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 6/26 marriage who were offering much more dowry. Petitioner used to take her salary on one pretext or another and would beat her on being refused. Renu Tanwar (Petitioner No.4) forced her to take dangerous medicines when she was pregnant. That she was not taken to a Sr. Gynecologist for check up when she faced problem in her uterus and stomach. That she was forced to do all household work and was beaten mercilessly when she refused to do the same. On 7.1.2004 she had heavy bleeding but none of the petitioners paid any attention despite being told. On 8.1.2004 she called her father who took her alongwith him. All the petitioners told him about their demand of Rs. 5 lakh cash and maruti esteem car LXI. On 9.1.2004 she was admitted in G.M. Modi Hospital, Malviya Nagar where she was advised to undergo surgery to save her and her child's life for which Petitioner No. 1 was required to sign the papers which he refused to sign. On 10.1.2004 she returned to her parents' house without surgery. On 22.1.2004 Petitioner no. 1 came to her parents' house, dragged her and gave beatings C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 7/26 to her mercilessly. On 30.1.2004 doctors at Ganga Ram Hospital advised her abortion but again her husband refused to sign the papers and she was brought to his house and was subjected to torture. On 6.2.2004 at the advise of a cousin sister of her husband, she was admitted in Lady Hardinge Medical College but again her husband refused for abortion despite medical advise and brought her back and left her at her parents' house. On 11.2.2004 she suffered abortion at Sawan Neelu Angels Nursing Home, Saket for which the expenses were borne by her father from where she went to her parents' house. On 24.2.2004 she came to her matrimonial home and after 4-5 days her mother in law compelled her to do house hold works. On 11.3.2004 she started bleeding from her vital organs and even after telling all the Petitioners about it, no body paid any attention to it or gave medicine to her. On 7/8.4.2004 the petitioners compelled her to join school. On 10.4.2004, she had some problems but none of the petitioner paid any attention despite being told. On 17.5.2004 all petitioners made her to withdraw

all her C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 8/26 money from her bank account and she gave Rs. 55,000/- to her husband. On 20.5.2004 she was thrown out of her house. On 22.5.2004 she alongwith her father went to her in laws' house but all petitioners refused to keep her. On 29.6.2004 her husband forcibly took her to Lal Path Lab to prove that she was HIV positive but the test report was negative and her husband took her to matrimonial home. Then her husband telephoned her parents and told them to take her with them and thereafter her brother came and took her alongwith him. On 31.8.2004, her father went to the matrimonial home but again all Petitioners demanded Rs. 5 lakh and an Esteem LXI car. She then demanded her Istridhan articles from the Petitioners but they did not return. Jewellery was with her mother in law, FD and cash was with her husband, Furniture, AC, TV was with her father in law and sarees/suits were with her sisters in law. Again the articles were demanded on 3.9.2004 but to no avail. On 3.9.2004 she was beaten by her husband for which she was medically examined. She then made a police complaint in this regard.

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6. The police called both the spouses to the CAW Cell and investigated the matter and SI Rajbir Singh drew the following conclusion and submitted his final report on 25.7.2005. That the Respondent/complainant still wants to go back to her matrimonial house which in itself belies her complaint of beatings and dowry demands as in such a situation, she would not have desired to go back to the matrimonial house. That the differences arose between the spouses only after receipt of Lal Pathology Lab in which the complainant was found to be suffering from Harpies Simplex virus which is a communicable disease and on the basis of this, the husband had filed a divorce petition against her on 19.8.2004 and the complaint made by the wife in CAW Cell was a counter blast to it. According to AIIMS hospital, she was not suffering from this disease. That enquiries from Dr. Basu of Sawan Neelu Angels Nursing Home revealed that the abortion was under normal circumstances on 11.2.2004 and that she had not told any thing regarding dangerous medicines given by complainant's sister in law Renu. That local enquiries C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 10/26 revealed that Renu Tanwar was a BDS trainee at Maulana Azad Medical College and other sister Roopa Tanwar was a student of IT Engineering at Amity Engineering College and both of them used to remain busy since morning to evening in college. That the complainant had refused to accept her Istridhan articles though the Petitioners were ready to return the entire Istridhan articles. He thus sought permission for registration of case only against husband and mother in law of the complainant u/s 498-A/406/34 IPC. The Inspector also recommended this report and submitted the same to ACP on 1.8.2005. The ACP observed that the dowry demand allegations are general in nature, that the abortion was spontaneous and the sisters in law had no role to play in it, that the divorce case was filed by the husband in August 2004 after she was diagnosed to be suffering from simplex virus whereafter his wife filed the complaint in CAW Cell in September 2004 and that the wife refused to accept the Istridhan articles when offered by the Petitioners. He therefore recommended registration of FIR against husband alone C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 11/26 u/s 498A IPC on 17.8.2005 and sent the case to Addl. DCP. On 29.8.2005, Addl. DCP approved registration of case and hence the FIR was registered.

7. By the impugned order dt. 2.6.2010, the Ld. Trial Court observed that there are specific allegations of dowry demand and beatings against all the Petitioners. Also that the complainant made specific averment of giving articles at the time of marriage. Ld. Trial Court thus found a prima facie case against all the Petitioners u/s 498- A/406/34 IPC.

8. The Ld. Trial Court vide the impugned order directed framing of charge under Section 498A IPC against the revisionists. Section 498A IPC reads as under:-

"Section 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.

C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 12/26 Explanation For the purpose 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."

9. A perusal of the complaint made by the Complainant to the CAW Cell, which was the basis for the FIR in question, shows that the allegations made in the complaint are at the most against the Petitioner No. 1 - husband of the complainant/Respondent No. 2. The investigation conducted by the CAW Cell clearly found that the differences arose between the spouses only after the complainant was found positive with a communicable disease. Thereafter, the husband of the complainant filed C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 13/26 the divorce case i.e. on 19.8.2004 and thereafter in September 2004 the complainant approached the CAW Cell with her complaint, contents of which have already been noticed above. This complaint thus is apparently only an after thought and counter blast to the divorce case filed by the Petitioner No. 1 against Respondent No. 2. It has become a general tendency of ladies that when the marriage goes wayward, they make allegations of dowry demand and harassment against all the relatives of the husband, so as to settle their score. A minute perusal of the complaint shows that the allegations of dowry demand and harassment are vague and general in nature. The allegations made are improbable and justice demands that the family members of such a husband must be saved from such frivolous litigation which can have disastrous effects on the future life of aged parents and unmarried sisters of such a husband. It was never the intention of the legislators to unleash judicial terrorism in the wake of giving rights to a harassed wife who is genuinely a victim of dowry demand. The police has made detailed C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 14/26 investigation in this matter and came to the conclusion that a case u/s 498A IPC is made out only against the husband of the complainant. It is high time that courts rise to the occasion and protect the innocent family members of such husband from protracted litigation. If we see the complaint prior to that date, the

allegation is only that of demand of Rs. 5 lakh cash and a maruti esteem Lxi car. Repeatedly, it has been stated that the Petitioners demanded Rs. 5 lakh and maruti Esteem LXi car. Right from the first demand till the last date, the demand continued to be that of Rs. 5 lakh and Esteem Lxi car. The very fact that the allegation is that demand of Esteem LXi car was made does not appeal to reason as it looks improbable that even the model/variant of the car would be demanded by a person, not to forget that LXi model is not the top model of Esteem Car - which was VXi. One wonders if a demand of a car is to be made, why the top model would not be demanded. This very fact casts serious doubts about the alleged demand of car. Allegations in the complaint have been made about C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 15/26 beatings and dowry demands but despite all this, the complainant has desired to live with the family of her husband. These two things are diagonally opposite to each other and cannot happen simultaneously. No married woman would like to return to such a house where she is harassed for dowry, where she is beaten by her in-laws, tortured and taunted by them. But despite all such allegations, if an estranged woman insists to go back and join the family of her husband, the allegations of dowry demand and harassment including beatings become extremely doubtful and on such allegations, all the family members of the husband cannot be implicated. Unrealistic allegations were made about telling personal problems to all the Petitioners who did not take care of the complainant but still the parents of the complainant do not intervene and the complainant, despite undergoing all such ordeals, still expresses her desire to live with such family members. The complainant has stated about administering dangerous medicines to her and about her abortion due to harassment but the statement of the doctor of the hospital C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 16/26 where the abortion took place, clearly shows that the said abortion was spontaneous and no history of any forcible medication by the family members of the complainant was given to her by the complainant. Perusal of medical papers of Sir Ganga Ram Hospital shows the complainant to be admitted there from 12.1.2004 to 19.1.2004 but again there is no mention of any alleged harassment or beatings etc. in the history by either of the petitioners. Medical papers of AIIMS hospital dt. 23.8.2004 records that the complainant was 'anxious to conceive'. She also told about the spontaneous abortion in February 2004 to the attending doctor. Interestingly, again she did not give any history of harassment but was rather anxious to conceive. If she had all kinds of troubles with her husband and his family members in her matrimonial home, why was she so anxious to conceive, not to forget the turbulations undergone by her from her husband and her family members when she had earlier conceived which according to her, resulted in her abortion due to their atrocities. Medical papers of Lady Harding Medical C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 17/26 College dt. 4.1.2005 records that the complainant had spontaneous abortion in February 2004. There is no reason for the complainant to not have stated the history to the attending doctor if there was any forced medication and the statement of the attending doctor points towards the conclusion that there was no harassment to the complainant on this score at the hands of the family members of the husband of the complainant. Allegations have been made about giving Rs. 55,000/- by the complainant to her husband on 17.5.2004 and of beatings given to her by her husband on 3.9.2004 for which she was medically examined in Safdarjung Hospital wherein she gave history of assault and having sustained injuries on her head and chest. After 2 days, she again gave the history of assault 2 days back by her husband. A judicial scrutiny of the complaint thus leads to only one conclusion that except the husband (Petitioner No. 1) the family members of the husband of the complainant cannot be charged u/s 498-A IPC and only her husband can be charged u/s 498-A IPC.

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10. Section 406 IPC deals with criminal breach of trust. Section 406 IPC reads as under:-

"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."

11. Section 405 IPC defines criminal breach of trust. The relevant portion of the definition reads as under:-

"405 Criminal Breach of Trust□Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

12. Essential ingredients of the offence are that there must be entrustment of property to accused and there must be misappropriation or conversion to one's own use by the C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 19/26 accused. In Jaswant Lal vs. State AIR 1968 SC 700, the Hon'ble Supreme Court laid down that entrustment is an essential ingredient of an offence under Section 406 IPC. In Reshan Lal vs. State AIR 1983 SC 631, Hon'ble Supreme Court held that proof of entrustment is an essential ingredient of the offence. Similarly, in Ram Narayan vs. CBI 2003 (3) SCC 641, Hon'ble Supreme Court, held that to constitute an offence of criminal breach of trust, there must be an entrustment. As such, entrustment is one of the essential ingredients for the offence under Section 406 IPC.

13. I have gone through the complaint made by the complainant Poonam Tanwar to the Police. There is no averment in this entire complaint regarding entrustment of dowry articles to any particular person. It has not been stated in this complaint as to what articles of dowry were entrusted and to which accused. The complaint is also bereft of other necessary details regarding the dates as to when the dowry articles were entrusted, what were the C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 20/26 articles, what was their description, how many articles - no such details have been mentioned in the complaint. Only vague and general allegations have been made that the dowry articles are in custody of the accused persons. There is no averment regarding the date on which the dowry articles were handed over nor there is any averment as to who was the person who handed over the dowry articles and who were the persons to whom the dowry articles were handed over. There is no mention in the complaint and the statements as to what were the exact description of the dowry articles which were allegedly handed over. Hon'ble Supreme Court in the case of Neelu Chopra vs. Bharti 2010 (1) RCR (Crl). 115, quashed the complaint in the absence of any such averments as noted above. In Onkar Nath Mishra vs. State, 2008 (2) SCC 561, Hon'ble Supreme Court quashed a charge under Section 406 IPC when it found that no averment regarding

entrustment of any kind of property was made by the complainant to the accused persons and its misappropriation by them. Apart from it, during the C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 21/26 investigation it was noticed by the police during investigation that the complainant had refused to take back the Istridhan articles and then the same were deposited in maalkhana after intervention and directions of the Court.

14. The Ld. Trial Court in the impugned order has framed the charge under Section 406 IPC against the revisionists on the ground that there are allegations in the complaint that the dowry articles and ornaments are with the husband, mother-in-law, father-in-law and Nanand Nirmala. The Ld. Trial Court failed to appreciate the complaint and the statements of the witnesses wherein no specific averment regarding entrustment of dowry articles to the revisionists was made. In the absence of any specific averments regarding entrustment, a charge under Section 406 IPC cannot be sustained, it being an essential ingredient for sustaining a charge under this Section as per the judgments of the Hon'ble Supreme Court, (Supra). When the first basic ingredient of entrustment of any article is missing from the complaint, a charge under C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 22/26 Section 406 IPC cannot stand. Apart from it, it has also been noted that the complaint is also silent regarding the other details which as per the judgments of the Hon'ble Supreme Court (Supra), are necessary.

15. It is useful to refer Section 227 of the Code of Criminal Procedure, 1973, which reads as under:-

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

16. The scope of Section 227 of the Code of Criminal Procedure was discussed by the Hon'ble Supreme Court in the case of State of Bihar vs. Ramesh Singh (1977) 4 SCC 39, wherein it was observed as follows:-

... ... If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 23/26 by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

17. In Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4, the Hon'ble Supreme Court after adverting to the conditions enumerated in Section 227 of the Code and other decisions, enunciated the following principles:-

(1) That 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 24/26 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 the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code 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.

18. In these circumstances, the revision petition is partly allowed. The impugned order, so far as it relates to framing of a charge under Section 498-A IPC against the Petitioners 2 to 5 is concerned, is hereby set aside. The impugned order regarding framing of charge against all the petitioners u/s 406 IPC is also set aside. In other words, only Petitioner No. 1 is liable to be charged under C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 25/26 Section 498A IPC and rest of the petitioners are hereby discharged.

19. TCR be returned back to the concerned court alongwith a copy of this order. Petitioner No. 1 and Respondent No. 2 are directed to appear before the Ld. Trial Court on 19.01.2012 for further proceedings in the matter in accordance with law.

20. File be consigned to the Record Room.

Announced in the open court. (Rajeev Bansal) Dated:11.01.2012 ASJ-3/South District Saket Courts, New Delhi C.R No.24/10 Adesh Tanwar & Others vs. State & Anr. 26/26