

Delhi District Court

Rishi Bhardwaj vs State (Nct Of Delhi) on 1 October, 2021

IN THE COURT OF SHRI ANIL KUMAR
ADDL. SESSIONS JUDGE - 03 : SOUTH DISTRICT
SAKET COURT : NEW DELHI

Cr.Rev No.146/19
CNR no. DLST010023902019

1. Rishi Bhardwaj
S/o Late Sh. P.K. Bhardwaj
R/o House No. 85
Sector 12 R.K. Puram, New Delhi - 22

Presently in
Ajman, UAE

2. Rahul Bhardwaj
S/o Late Sh. P.K. Bhardwaj
r/o House No. 85
Sector 12 R.K. Puram, New Delhi - 22
 3. Sumit Bhardwaj
S/o Late Sh P.K. Bhardwaj
r/o G-3, Plot No. 857, Shalimar Garden Extn-I
Sahibabad, Ghaziabad-201005
 4. Kamlesh Bhardwaj
w/o Late Sh. P.K. Bhardwaj
r/o House No. 85
Sector 12 R.K. Puram, New Delhi - 22
-Revisionists

Versus

1. State (NCT of Delhi)
Through SHO, PS Safdarjung Enclave,
New Delhi

CrI Rev. No.146/19
Rishi Bhardwaj & Ors Vs. State & Ors.

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2. Geeta Sharma Bhardwaj
W/o Rishi Bhardwaj
R/o C-7/38, SDA Colony.
Hauz Khas, New Delhi

Also at

Geeta Sharma
D/o Shri K.P. Sharma
R/o A-24, Kunj Vihar
Plot No. 19, Sector-12
Dwarka, Delhi-17

Respondent No. 2

... Respondents

Date of Institution	:	06.04.2019
Date of Arguments	:	06.09.2021
Date of Order	:	01.10.2021

ORDER

1. Present criminal revision petition is filed under section 397 r/w 399 of the code of criminal procedure, 1973 for setting aside impugned order dated 07.01.2019 passed by Ld. Metropolitan Magistrate 03, Mahila Court, South District, Saket in FIR no. 73 of 2015 PS Safdarjung Enclave wherein charges were framed against the revisionists.

2. Brief facts necessary for disposal of the present revision petition are that on 08.12.2003 revisionist No. 1 and Respondent No. 2 got married in Noida according to Hindu rites and ceremonies. Date of alleged incident relating to the charge under CrI Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 2 of 27 Section 354 IPC was 9th December, 2003. Between the years 2003-2011 revisionist no. 1 and Respondent No. 2 lived together in various countries including Singapore, Macau, Mexico and India (in Delhi). On 03.02.2009, the revisionist no.1 and Respondent No. 2 were blessed with a child "Rudra". Since 03.03.2011 revisionist no.1 and Respondent No. 2 have been living separately on account of various serious matrimonial issues. On 16.03.2011 revisionist no.1 initiated divorce proceedings against the Respondent No. 2. On 29.01.2013 Respondent No. 2 filed her written statement in HMA 140/2011 in Family Court. On 19.3.14 respondent no.2/complainant filed a complaint against her husband and other relatives with CAW Cell South District, which lead to the filing of FIR of present case. Her statement under Section 161 Cr.P.C was recorded on 15.2.15, statement u/s 164 Cr.P.C was recorded on 07.03.15. Statement of complainant's father u/s 161 Cr.P.C was recorded on 14.2.17. Statement of mother of complainant was also recorded u/s 161 Cr.P.C. After completion of investigation charge sheet was filed on 16.5.2017 against the petitioners and other relatives for offences u/s 498A/406/34 IPC. In December, 2018 supplementary chargesheet was filed adding Section 354 IPC against the petitioner no.2 Rahul Bhardwaj and petitioner no.3 Sumit Bhardwaj. Vide order on charge dt.7.1.2019, Ld.Trial Court ordered for framing of charges u/s 498A/34 IPC against all the petitioners in present case and framing of charges u/s 354/34 IPC against petitioner no.2 & 3. Accused persons other than the petitioners were discharged of offence u/s 498A/34 IPC. All the CrI Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 3 of 27 accused persons in the FIR were discharged of offence u/s 406/34 IPC. In consequent of order dt. 7.1.2019 charges were framed against petitioners on 6.2.19 and 23.3.19. Petitioner no.1 is the husband of complainant/respondent no.2. Petitioner no.2 is elder brother of petitioner no.1. Petitioner no.3 is younger brother of petitioner no.1. Petitioner no.4 is mother in law of complainant.

3. Mr.Trideep Pias, Ld.Senior Advocate appearing for petitioners has submitted that complainant has made false, vague, specious and unsubstantiated allegations in her complaint and statements.

She has simply mentioned that the revisionist No. 2 and 3 raped Respondent No. 2 in a vague and specious manner, without any details whatsoever. This was the first time that any such events were mentioned, despite the fact that the event relates to 2003 and the complaint was filed in 2015 about 12 years later. Respondent No. 2 gave her Section 164 statement on 07.03.2015 when she again changed her allegations and stated that Sumit and Rahul touched me inappropriately, opened my blouse and pressed my breasts, touched my private parts but there was not a whisper of allegations regarding rape in the said statement and none of these details were ever mentioned either in the FIR or in the Written Statement filed in the divorce case. Police filed its final report under Section 173 Cr.P.C. on 10.04.2017 under Sections 498A/406/34 IPC. Parties were divorced by a final judgment and decree passed by Ld. Principal Judge, Family Court, Saket dated 01.11.2018 in HMA 140/201.

Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 4 of 27 Supplementary charge-sheet was filed by the police in December 2018 though the same was not considered by the Magistrate while passing the impugned order dated 07.01.2019.

4. Ld. Counsel for revisionists has further submitted that impugned order is illegal, incorrect, improper, contrary to facts and law and if permitted to stand shall result in serious miscarriage of justice. It is further submitted by Ld. Counsel for revisionists that the impugned order is based on conjectures and surmises and wrong appreciation of law. It is further submitted by Ld. Counsel for revisionists that the impugned order fails to appreciate that the complainant/prosecution has failed to establish even prima facie against the Petitioners under Section 498A/34 IPC and Section 354/34 IPC. It is further submitted by Ld. Counsel for revisionists that no cognizance of the offence under Section 354 IPC could have been taken or charges framed against the Petitioners in light of Section 468 of the Code of Criminal Procedure, 1973, which provides for a 3 year limitation period for taking cognizance of offences for which punishment is between 1 year and 3 years. It is further submitted by Ld. Counsel for revisionists that it is the unamended Section 354 IPC which applies to the present case, the incident being from the year 2003 (the amendment was introduced in the year 2013 and increased the punishment to 5 years maximum). That it is trite law that criminal law has no retrospective application and therefore the amendment to Section 354 IPC in the year 2013 has no application to the present case since the alleged offence was Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 5 of 27 committed in 2003. It is further submitted by Ld. Counsel for revisionists that as regards the offence of Section 354 IPC, it is not the case of Respondent No. 2 that it is continuing offence, and the complaint by Respondent No. 2, FIR, and closure report all firmly peg the date of the alleged incident to 9.12.2003, therefore, there can be no doubt that a complaint in 2014 about the incident was barred by Section 468 IPC. It is further submitted by Ld. Counsel for revisionists that in any case, no reasons have been given by the Ld. Magistrate in relation to condoning the period of limitation as envisaged under Section 468 and the Ld. Court has erroneously framed charges in 2019 for an offence which relates to 2003, and was complained of for the first time only on 19.03.2014 by Respondent No. 2 to CAW, Saket. It is further submitted by Ld. Counsel for revisionists that as regards the offence under Section 498A IPC, as well, no charges could have been framed since the same were clearly barred by Section 468 CrPC. It is further submitted by Ld. Counsel for revisionists that again, no reasons have been given by the magistrate condoning the excessive delay in filing the complaint by Respondent No. 2 while framing charges. It is further submitted by Ld. Counsel for revisionists that there are fatal inconsistencies in the case of

Respondent No., both in relation to the allegations under Section 354 IPC as well as 498A IPC. For instance, as also noted by the Ld. Family Court judgment, there are at least 3 different versions put forward by the complainant i.e. Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 6 of 27 a. in the initial CAW complaint 19.03.2014 /FIR dated 21.01.2015 she alleges Rape (which is a bald assertion without any details or substantiation);

b. In her Section 164 statement dated in the present case, 07.03.2015 she again changed her allegations and stated that Sumit and Rahul touched me inappropriately, opened my blouse and pressed my breasts, touched my private parts. That there is not a whisper of allegations regarding rape in the said statement, and further, none of these details were ever mentioned wither in the FIR or in the Written Statement filed in the divorce case; c. In Respondent No. 2's written statement in the divorce case, dated 29.01.2013 (which pre-dates the present FIR and Section 164 statement) there is no mention of the various serious allegations which are contained in the present FIR/Section 164 statement, in the said written statement.

5. Ld. Counsel for revisionists has further submitted that the Ld. Magistrate failed to note that the present case is simply a counterblast and a false and frivolous case arising out of a matrimonial dispute between Petitioner No. 1 and Respondent No. 2. Respondent No. 2, in the divorce case, has stated on record that she wants to live with him and to continue the marriage. This surely goes to show that the allegations mentioned in the instant FIR are not only belated but also false. It is further submitted that the Ld. Magistrate failed to rely upon the judgment of the Ld. Family Court which clearly found that the present case is a false case. It is further submitted that the said Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 7 of 27 judgement is well within the realm of adjudication at the stage of framing of charges and must be considered at this stage rather than at the final stage. It is further submitted that the Ld. Magistrate failed to note that the allegations made by Respondent No. 2 do not amount to cruelty within the meaning of Section 498-A of the IPC. That none of the basic ingredients of Section 498A have been made out in the present case. It is further submitted that Ld. Magistrate failed to note that there is no prima facie legal evidence at all for any of the outrageous and fanciful allegations made by Respondent No. 2 which would even pass the test of a prima facie case. Further, all the allegations are vague and bereft of the specific details as to the date, place and time of the incident. Moreover, Respondent No. 2 has concealed and withheld the material fact that she and her father KP Sharma had received Rs. 12.67 Lakhs from the husband as a purchase price of Dwarka flat. Respondent No. 2 sold the said Dwarka flat and she admittedly received the sale proceeds in her own bank account. It is further submitted that the impugned order fails to give reasons for the charges being framed against Petitioner No. 2, 3 and 4 under Section 498A, especially in light of the fact that the allegations against them are especially vague, specious, unsubstantiated and do not make out the elements under Section 498A IPC for any of them. In any case such an exercise in adjudication has to give reasons for each person before framing charges and setting in motion the criminal process. It is further submitted that limitation qua each of the accused has to be seen separately and in each person's case the incidents vaguely Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 8 of 27 referred to are much beyond limitation as provided by Section 468 CrPC.

6. On these submissions, Ld.Counsel for the revisionists has prayed for allowing present petition and setting aside impugned order dated 07.01.2019 passed by Ld. Metropolitan Magistrate 03, Mahila Court, South District, Saket in FIR no. 73 of 2015 PS Safdarjung Enclave wherein charges were framed against the revisionists and thereby for discharge the revisionists.

7. In support of his contentions Ld. Counsel for revisionists has relied upon following judgments:

A. "Sushil Kumar Sharma Vs. Union of India", (2005) 6SCC 281 B. "Preeti Gupta and Anr. v. State of Jharkhand and Anr.", (2010) 7 SCC 667 C. State of H.P. v. Tara Dutt and Ann, (2000) 1 SCC

8. In "Sushil Kumar Sharma Vs. Union of India" it was held as under:

".....

10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty CrI Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 9 of 27 of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

.....19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well- intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters CrI Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 10 of 27 relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth,

punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

9. In "Preeti Gupta and Anr. v. State of Jharkhand and Anr.", (2010) 7 SCC 667 it was held as under:

".....32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished.

They must ensure that exaggerated versions of small incidents should not be reflected in the criminal Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 11 of 27 complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place

where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.

36.

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37. Before parting with this ease, we would like to observe that a serious relook of the entire provision is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

10. In State of H.P. v. Tara Dutt and Ann, (2000) 1 SCC 230 it was held as under:

".....

8. In view of the observations made by a Bench of two Judges of this Court, while this appeal was placed before their Lordships, for hearing that the decision in the case of Arun Vyas v. Anita Vyasi requires reconsideration, we think it necessary to notice the same. In the said case of Arun Vyas, one of the questions for consideration was whether the offence under Section 498-A IPC is a continuing offence. The Court ultimately answered that the essence of the offence in Section 498-A being cruelty, the same is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. On facts, the Court found that the last act of cruelty being committed on Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 13 of 27 13-10-1988 and the period of limitation having commenced from that date, the charge-sheet that was filed on 22-12-1995 and the subsequent cognizance on that basis was clearly barred by limitation under Section 468(2)(c) of the Code of Criminal Procedure, we see no infirmity with the said conclusion. One other question that was raised and adverted to in the aforesaid case is that in the absence of any specific order by the Magistrate, taking cognizance, after the period of limitation provided in Section 468(2)(c) of the Code of Criminal Procedure by invoking the power under Section 473 and condoning the delay, the Magistrate committed error by discharging the accused on the ground of limitation. The aforesaid observations made by this Court indicate that the order of the Magistrate at the time of taking cognizance in case of an offence under Section 498-A, should indicate as to why the Magistrate does not think it sufficient in the interest of justice to condone the delay inasmuch as an accused committing an offence under Section 498-A should not be lightly let off. We have already indicated in the earlier part of this judgment as to the true import and construction of Section 473 of the Code of Criminal Procedure. The said provision

being an enabling provision, whenever a Magistrate invokes the said provision and condones the delay, the order of the Magistrate must indicate that he was satisfied on the facts and circumstances of the case that the delay has been properly explained and that it is necessary in the interest of justice to condone the delay. But without such an order being there or in the absence of such positive order, it cannot (sic) be said that the Magistrate has failed to exercise jurisdiction vested in law. It is no doubt true that in view of the fact that an offence under Section 498-A is an offence against the society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 14 of 27 satisfied, in case of period of limitation for taking cognizance under Section 468(2)(c) having expired that the circumstances of the case require delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Code of Criminal Procedure.

11. Ld.Additional PP for the State has submitted that as per rukka the date of incident is 11.03.11 and continued till the date of filing of complaint on 21.1.2015. The present matters pertains to the offence u/s 498A/406/34 IPC. In such cases the complainant/family members had first try their best to keep the matrimonial relations intact and the complaint is made only after all the possible modes of conciliation are exhausted.

12. It is further submitted by Ld.APP that the offence in the charge sheet are continuous in nature and the complainant have to live separately on account of the cruelty / harassment committed upon her on account of unlawful demand of dowry and therefore the period of limitation shall also run till she is constrained to live separately on account of above said harassment to her. The Ld.MM has taken cognizance of the offence of 16.5.17 on the charge sheet filed u/s 498A/406/34 IPC and there is nothing wrong in the said order which vitiates the taking of cognizance.

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13. It is further submitted by Ld.APP that the order of Ld.MM dated 7.1.2019 is speaking order and all the offences and accused persons have been dealt with properly and as such there is no irregularity or illegality in the said order of charge. No roving or in depth inquiry can be made at the stage of charge and only prima facie case is to be seen against the accused on the basis of charge sheet filed by the IO and the documents attached thereto. No other material can be considered at the stage of framing of charge unless the said document/material is of conclusive in nature and no further proof is required.

14. It is further submitted by Ld.APP that the order of Ld.MM dt 7.1.2019 is self explanatory and no interference is required in the present matter in the circumstances and facts of the case, considering the statement of the witnesses and material filed alongwith the chargesheet by the IO. This revision is liable to be dismissed.

15. Ms.Samridhi Arora, Ld. Counsel for complainant/Respondent no.2 has submitted that impugned order has been rightly passed by Ld.Trial Court and petitioners are deliberately trying to avoid the

culpability of the charges framed. She has further stated that criminal court is very cautious and careful before proceeding to frame charges and these charges are only established when there is established prima facie charges against the accused and not otherwise. She has further submitted Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 16 of 27 that Court at the stage of framing of charges is not required to meticulously weigh the evidence and prima facie view of the matter is to be taken into consideration. She has further stated that petitioner no.2 and his wife intentionally plant a serious of systematic and persistent acts to mentally harass respondent no.2 and to make her life unsupportable by making away the income of sole bread earner of her family. Petitioner no.2 alongwith his file started lodging multiple frivolous complaints without any rhyme or reason before various authorities against father of respondent no.2 which amount to causing mental cruelty to respondent no.2.

16. In support of her contention, Ld. Counsel for respondent no.2 has relied upon following judgments:

- A. "Vanka Radhamanohari Vs. Vanka Venkata Reddy & Ors", (1993) 3 SCC 4;
- B "K.Srinivas Rao Vs. D. A Deepa", (2003) 5 SCC 226;
- C "Samar Ghosh V. Jaya Ghosh", (2007) 4 SCC 511;
- D "S.Bangarappa Vs. Ganesh Narayan Hegade" Crl. Rev 513/2019;
- E "Amit Vs. State (Govt of NCT of Delhi)"Cr.MA.9286/2019

17. In addition to aforesaid judgments relied upon by Ld. Counsels for the parties, let me have a look on the some other authorities pronounced by higher courts.

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18. In Raj Kumar Khanna Vs. The State (NCT of Delhi) 2002 (1) JCC 327 it was observed that cruelty by itself without demand would not be sufficient to bring home the guilt under explanation (b) of Section 498A IPC. Harassment by itself is not a cruelty unless here is a demand of dowry and the cruelty is a consequence of that demand. It was further held that the pre-condition for attracting the provisions of Section 498A is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the woman without any nexus with the demand then such a cruelty will not be covered under explanation (b) under Section 498A IPC.

19. In Savitri Devi Vs. Ramesh Chand & Ors., 2003 (2) JCC 881, the Hon'ble High Court of Delhi in para no. 16 has held as under: "In constituting 'cruelty' contemplated by Section 498 A IPC the acts or conduct should be either such that may cause danger to life, limb or death or cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be 'willful' i.e. intentional. So to invoke provisions of Section 498A IPC the tests are of

stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health. Further conduct that is likely to drive the woman to commit Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 18 of 27 suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with material life".

It is further held in para 18 of the judgment that: "Thus to constitute "harassment" following ingredients are essential:

(i). Woman should be tormented i.e. tortured either physically or mentally through constant interference or intimidation.

(ii). Such act should be with a view to persuade or compel her to do something which she is legally or otherwise not expected to do by using force or threats.

(iii) Intention to subject the woman should be to compel or force her or her relatives to fulfill unlawful demands for any property or valuable security. It is further held in para no. 28 of the judgment that: "Again it is because of tendency to involve innocent persons that the Supreme Court has cautioned the courts to act with circumspection. In the words of Supreme Court "Often innocent persons are also trapped or brought in with ulterior motives and therefore it places an arduous duty on the court to separate such individuals from the offenders. Hence, the courts have to deal such cases with circumspection, sift through the evidence with caution, scrutinize the circumstances with utmost care".

20. In Neera Singh Vs. State (Govt. of NCT of Delhi) & Ors. I (2007) DMC 542, it was held in para 7 that:

Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 19 of 27 "Now a days, it has become a tendency to make vague and omnibus allegations against every member of the family of the husband, involving everybody under Section 498A and 406 of the IPC by making one or the other allegations. Hence, it has become very necessary for the courts to carefully scrutinize the allegations and to find out if the allegations made really constitute the offence and meet the requirements of law at least prima facie....."

21. In the light of above case laws as produced & discussed above and the submissions made on behalf of parties, I have scrutinized material on record and TCR including statement of complainant and other witnesses.

22. Section 468 Cr.P.C enumerates as under:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 20 of 27 (3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

23. Section 473 Cr.P.C enumerates as under :

473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

24. Section 354 IPC presently provides punishment upto 5years. Earlier, before substitution w.e.f. 03.02.2013 this Section provided punishment upto 2years only. Ld.Trial Court has passed order on Charge and framed charges against the petitioner no.2 & 3 u/s 354 IPC for their act allegedly committed in year 2003. Since offence u/s 354 IPC involved in present case occurred on 08.12.2003 & 9.12.2003 as appears in the charge framed, hence, as per provision of Section 468 IPC, limitation period of 3years is applicable in the present case in respect to this specific offence. In the case in hand complaint was filed by the complainant in year 2014 and FIR was registered in year 2015 and cognizance of the offence u/s 354 IPC was taken in year 2017. There is nothing in the impugned order about the condonation of delay in taking cognizance as required u/s 473 Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 21 of 27 Cr.P.C. Since the complaint was filed by complainant in year 2014, hence, cognizance of the offence u/s 354 IPC taken by Ld.Trial Court is clearly barred by Limitation and petitioner no.2 & 3 cannot be allowed to be put on trial of a time barred offence. Hence, petitioner no.2 & 3 are liable to discharged of the offence u/s 354/34 IPC.

25. Charges u/s 498A/34 IPC has been framed by Ld.Trial Court against all the petitioners. Petitioner no.1 is husband of the complainant. Complainant in her complaint and statements recorded u/s 161 Cr.P.C and 164 Cr.P.C has made persistent allegations since the marriage, against

petitioner no.1 about demand of flat, beating, threat to divorce, extra marital affair and leaving her and minor child without any information. I don't find any irregularity or infirmity in the order passed by Ld.MM against the petitioner no.1 for framing of charges u/s498A IPC and charge framed accordingly.

26. As far as respondent no.2,3 & 4 are concerned, they are living separately from the complainant since year 2004 when complainant shifted alongwith petitioner no.1 in a flat in Dwarka allegedly purchased by her father in her name. From the material collected during investigation it reflects that complainant rarely/occasionally met with these petitioners after shifting in Dwarka. Complainant after shifting to Dwarka in her flat lived Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 22 of 27 there or alongwith her parents or abroad alongwith petitioner no.1.

27. FIR of present case has been registered on the complaint made by complainant to CWC on 19.03.2014. This complaint was made by complainant only after filing of the divorce petition by her husband. Before that there is no complaint filed by the complainant regarding cruelty or harassment by the petitioner no.2,3 & 4.

28. Written complaint dated 19.3.2014 submitted by complainant to CWC is running upto 48 pages and consisting 133 paras and therein she has made chronological allegations. Allegations of demand of flat and furniture against her husband and family members are of prior to marriage or year 2004.

29. Allegations made by the complainant, after her shifting with husband against the petitioner no.2 can be summarized as he torturing complainant by calling her family's name and saying that she has no dressing sense and her parents were not worthy of teacher her. On 25.05.2010 complainant went to R.K.Puram where Sumit Bhardwaj did not spoke to her and was rude to her. She complaint to Rishi's mother and his mother shouted at her if she don't want to keep any relations with Sumit then do not speak to him. Rishi's mother started shouting at the complainant that why complainant did not invite them for Rudra's (son of Crl Rev. No.146/19 Rishi Bhardwaj & Ors Vs. State & Ors. Page no. 23 of 27 complainant) birthday. Then complainant replied that there should be no issues as they never invited complainant for any function as complainant was staying away from them. They did not invited complainant for Sumit's wedding and did not informed when Parul blessed with second child. They did not show complainant the picture of Sumit's son. Complainant asked Rishi's mother that why she never came to help her during pregnancy. But the discussion heat up so much that Rahul Bhardwaj, Unnati Bhardwaj, Preeti Bhardwaj and Sumit Bhardwaj beated complainant badly. On 18.2.2010 when complainant's son was hospitalized and her husband did not react then she called Rahul and told that Rudra was hospitalized and some woman was with Rishi then Rahul was rude and abused her. On 23.02.2011 complainant came to know that Rahul has lodged a false complaint and her father and brother and her father replied the same.

30. Nature of allegations pertaining to year 2005 onwards against the petitioner no.3 & 4 are similar to the allegations made against petitioner no.2.

31. Allegations made by the complainant in the complaint against petitioner no.2,3 & 4 pertaining to year 2005 onwards are not related to demand of dowry or otherwise sufficient to connect the alleged

acts of these petitioners with the offence of cruelty or harassment as required u/s 498A IPC.

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32. Ld.Counsel for respondent no.2 has filed copy of the complaint dated 19.5.14 written by Unnati Bhardwaj against father of the complainant, alongwith additional written submission and has submitted that filing of this complaint to different government authorities has caused mental cruelty to the complainant and hence, alongwith other grounds, this act of filing false complaint by the wife of petitioner no.2 in collusion with petitioner no.2 attract the offence u/s 498A IPC against the petitioner no.2. I find that aforesaid complaint is not the part of the trial court record. Further this complaint was filed by Unnati Bhardwaj, wife of petitioner no.2 after filing of the complaint dated 19.03.2014 by the complainant against her husband and other relatives including Unnati Bhardwaj. Unnati Bhardwaj has already been discharged by Ld.Trial Court. Statement of complainant u/s 164 Cr.P.C and 161Cr.P.C were recorded after the filing of the complaint by Unnati Bhardwaj. In these statements complainant has nowhere stated about any adverse effect upon her due to that complaint. In the facts and circumstances of the case aforesaid complaint filed by Unnati Bhardwaj cannot be treated as amount to causing mental cruelty to complainant.

I have gone through the judgments relied upon by ld Counsel for respondent no.2 and I am in respectful agreement with these judgments but in the facts and circumstances of the present case these judgments are of no help to respondent no.2.

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33. Alleged act of demand of the dowry and harassment in or before 2004 is sufficient to attract Section 498A/34 IPC against the petitioner no.2,3 & 4 but cognizance of this offence of year 2004 is barred by limitation and no charges can be framed of time barred offence. This offence on the basis of the alleged act committed by petitioner no.2,3 & 4 cannot be treated as continuing offence because after 2004 there is no persistent allegations of any act which can be connected to offence u/s 498A/34 IPC. In her complaint complainant has mentioned grievance regarding not providing of financial or medical help or help for purchasing flat, no one came to see her son and petitioner no.3 wanted not to keep continue talk with complainant. These petty issues between complainant and her husband's relative, who are living separately cannot be treated as persistent act constituting cruelty or harassment.

34. In view of above observation, I find that material collected by investigating agency during investigation are not sufficient to make out a prima facie case u/s 498A/34 IPC against the petitioners no.2,3 & 4. Hence, order on charge passed against petitioner no.2,3 & 4 and consequently charges framed u/s 498A/34 IPC against them by Ld.Trial Court are set aside. Charges framed against petitioner no.2 u/s 354/34 IPC are also set aside as cognizance of this offence is barred by limitation.

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35. I find no infirmity or irregularity in order passed by Ld.Trial Court on order on charge against petitioner no.1 and charges framed accordingly against him u/s 498A IPC.

36. The revision petition of petitioner no.1 is dismissed and petition of remaining petitioners i.e. petitioner no.2,3 & 4 are allowed.

37. Accordingly order on charge qua petitioner no.2,3 & 4 and accordingly charges framed against them by Ld.Trial Court are set aside. Petitioner no.2 - Rahul Bhardwaj, petitioner no.3 - Sumit Bhardwaj & petitioner no.4 - Kamlesh Bhardwaj are discharged.

Accordingly this petition is disposed off. File be consigned to record room.

Copy of judgment be sent to Ld.Trial Court alongwith TCR.

Announced in open Court
on 01.10.2021.

ANIL
KUMAR

Digitally signed
by ANIL
KUMAR
Date:
2021.10.09
14:34:34 +0530

(Anil Kumar)
Addl. Sessions Judge-03(South)
Saket Courts/New Delhi

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