

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order:31.01.2011

+ Crl.M.C.No. 162/2010

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31.01.2011

Manu Nath & Ors.

... Petitioner

Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Abhishek Agarwal, Advocate

Versus

State

... Respondent

Through: Mr. Sunil Sharma, APP for the State

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER (ORAL)

By present petition, the petitioners have assailed order dated 16th November, 2009 passed by the learned Additional Sessions Judge in a revision whereby he reversed the Order dated 11th March, 2008 of the learned MM of discharging the accused persons under Section 498A & 406 IPC.

A perusal of the order of the Ld. MM would show that the Ld. MM considered the material available on record, gave the details of the fact and came to the conclusion that no charge under Section 498A IPC or 406 IPC was made against the accused persons and discharged the accused.

In revision, the Ld. Additional Sessions Judge observed that at the time of charge, the Court is not to sift the evidence to see whether there was specific ground for conviction of the accused and quoted five judgments and observed that the Trial Court had exceeded and transgressed its limit and set aside the order of the Trial Court and asked the petitioners to face trial.

I consider that this is not what is required to be done by a Court in exercising judicial review. In a revision against charge, if an accused has been discharged, the revision Court cannot brush aside the order of the Trial Court in a casual and mechanical manner as has been done by the learned Additional Sessions Judge in this case.

A charge is liable to be framed against an accused by the Court if the material placed before the Trial Court is such that if entire admissible evidence collected by the police was considered true, commission of offence was made out.

The observation of the Appellate Court that the Trial Court was not to sift the evidence to see whether there was sufficient ground for conviction of accused is contrary to the judgments cited by the Ld. Additional Sessions Judge and his own observation that charge can be framed only if the entire material on record, if goes un-rebutted, a conviction can be said to be reasonably possible. In the present case, this is what the Trial Court has done.

It was observed by the Trial Court that marriage between the complainant and her husband was a love marriage and both knew each other since they were classmates since kindergarten.

After marriage complainant had problems with the family members of her husband. She wished to live separately and she shifted to a rental accommodation along with her husband and daughter. However, the marriage perhaps did not click and she took away her daughter and other articles except bulky one and went to USA. Her allegations were that since her marriage, she was subjected to unwarranted remarks in the garb of jokes about standard of her family and every accused person stated that she had not brought sufficient dowry. They among themselves used to speak of "physically handling" her. On one occasion, her in laws verbally abused her parents. Her *saas* (mother-in-law) and *nanad* (sister-in-law)

assaulted her when she resented abuses to her parents. Her *saas* demanded Rs. 50 lac.

The Ld. Trial Court found that no particulars of alleged incidents were given, nor the jokes or abuses were specified. The allegations were very vague. No occasion, date, month or year of demand of Rs. 50 lac was stated by complainant.

The other complaint of complainant was about her husband taking to drinking and smoking and in insulting her in presence of others whenever she tried to check his habits. She alleged that heavy drinking and smoking of her husband created havoc in the peaceful living of her married life - to such an extent, that she thought of committing suicide.

In respect of these allegations, the Trial Court observed that heavy drinking and smoking of her husband would not fall under Section 498A IPC. The Trial Court found that all her allegations about other facts were so vague that no case was made out under Section 498A and 406 IPC.

I consider that the Trial Court rightly judged the material available on record in order to find out whether the charge should be framed against the accused person or not. The Ld. Additional Sessions Judge did not appreciate that even if all allegations made by the complainant were considered true, no case under Section 498A or 406 could have been made out.

This petition is allowed. The order dated 16th November, 2009 of Ld. Additional Sessions judge is set aside. The order dated 11th March, 2008 of Ld. MM is restored.

JANUARY 31, 2011
SIDDHI

SHIV NARAYAN DHINGRA, J.