

2022 LiveLaw (SC) 52

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
INDIRA BANERJEE; J.K. MAHESHWARI, JJ.**

January 12, 2022.

CRIMINAL APPEAL NO. 83 OF 2022 (Arising out of S.L.P.(CRL.) No. 9762 OF 2021)
DEEPAK SHARMA VERSUS STATE OF HARYANA & ORS.

Indian Penal Code, 1860; Section 498A - Taking custody of jewellery for safety cannot constitute cruelty within the meaning of Section 498A.

Summary: Appeal against the order of the High Court denying permission to Appellant to leave the country - Allowed - The High Court has also not considered the allegations against the Appellant. There is not even any *prima facie finding with regard to liability, if any, of the Appellant to the complainant.*

(Arising out of impugned final judgment and order dated 24-11-2021 in CRM No. 33701/2021 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Manu Mridul, Adv. Mr. Surya Kant, AOR Ms. Priyanka Tyagi, Adv. Mr. Shalaj Mridul, Adv.

For Respondent(s) Dr. Monika Gusain, AOR

O R D E R

Leave granted.

No one has appeared on behalf of the Respondent No.2 in spite of notice.

This appeal is against an order dated 24.11.2021 passed by the High Court of Punjab and Haryana at Chandigarh dismissing Criminal Misc. No.33701/2021 in Criminal Miscellaneous Petition No. 33995 of 2021 filed by the Appellant for permission to travel back to the United States of America, where he has a job, and resume his duties.

The short question in this appeal is, whether the Appellant can be denied his fundamental right of personal liberty to travel abroad, subject to possession of a valid passport, visa and other requisite travel documents, only because he is arrayed as accused in a complaint filed by his brother's wife against his brother being the husband of the complainant and his parents, particularly mother and that too when the allegations in the complaint do not disclose any criminal offence on the part of the Appellant. The answer to the aforesaid question has to be in the negative.

The Appellant is the brother-in-law (husband's brother) of the Respondent No.2 (hereinafter referred to as the "complainant"). The Appellant is employed in Texas in the United States of America.

The complainant Annupriya Sharma, a permanent resident of Kurukshetra was married to Nitin Sharma, brother of the Appellant, according to the Hindu rites and customs on 20.01.2019.

On 03.02.2019, the complainant's husband went back to the United States of America, where he had been working. On 16.02.2019, the complainant left for the United States of America, to join her husband. She had to travel alone.

The complainant has stated that the said Nitin Sharma had been working as Application Engineer in a Multinational Company NOVOPLM (SCONCE), and had been residing in the United States of America since 2009 on H1B-Visa. The said Nitin Sharma apparently resides at Charlotte in North Carolina, as would be evident from the array of accused persons in the complaint.

It appears that there were differences and matrimonial disputes between the complainant and her husband Nitin Sharma, brother of the Appellant from the inception of their marriage. According to the complainant she was also harassed for dowry by her parents-in-law, particularly mother-in-law.

On 16.08.2019, the complainant returned to India, allegedly at the behest of her in-laws. In November 2019, the complainant's parents-in-law returned to India. After the complainant's parents-in-law returned, the complainant and her parents tried to contact them and also tried to contact the complainant's husband Nitin Sharma. The complainant's in-laws tried to avoid the complainant and her parents on one pretext or the other and the complainant's husband Nitin Sharma did not answer their calls. The complainant was not allowed to live in her matrimonial home at Faridabad.

On 07.09.2020, an FIR was filed by the complainant against her husband and in-laws under Sections 323, 34, 406, 420, 498A and 506 of the Indian Penal Code, 1860 was registered at the Thanesar City Police Station at Kurukshetra under Section 154 of the Criminal Procedure Code, 1973. The complainant's husband Nitin Sharma, her father-in-law, Suresh Chand Sharma, her mother-in-law, Satyawati Sharma and the Appellant were arrayed as Accused Nos. 1, 2, 3 and 4 respectively.

In a nutshell, the material allegations in the FIR were:

- (i) The accused pressurized the complainant's family to organise the marriage ceremony of the complainant and the said Nitin Sharma (Accused No.1) at Faridabad instead of Kurukshetra. As ceremonies/functions were held at Kurukshetra and Faridabad complainant's parents incurred expenditure of Rs.23 lakhs.
- (ii) The complainant's mother-in-law (Accused No.3) had demanded gold ornaments of her choice, saying that her elder daughter-in-law had brought 70 tolas of gold.
- (iii) After marriage the complainant's in-laws expressed dissatisfaction over the dowry brought by her. Her mother-in-law (Accused No.3) taunted her for bringing less dowry.
- (iv) The complainant's mother in law (Accused No.3) insulted the complainant even more after a cousin of the complainant's husband, whose marriage took place three days after the complainant got married, was gifted a car by the bride's family. It is alleged that the complainant's mother-in-law (Accused No.3) demanded a car.

- (v) The complainant's husband (Accused No.1) was not interested in her and found excuses to harass her. He returned home late in an inebriated state and fought with her without reason. After watching television till late at night, he slept on the couch.
- (vi) The complainant's husband (Accused No.1) did not allow her to go out of the Apartment. He did not arrange for social security, health insurance or driving licence for the complainant. He also did not allow her to obtain the same on her own.
- (vii) The complainant's husband (Accused No.1) made the complainant dependent on him even for small things. He did not give attention to her health, and smoked at home and also stocked non-vegetarian food in the refrigerator, though, before marriage, he had told her that he was a vegetarian and a nonsmoker. The complainant's husband (Accused No.1) twisted her arms when she tried to stop him from smoking.
- (viii) On the pretext of going to play cricket, the complainant's husband left the house early and returned at 3 o'clock at night. She suspected he was living with a lady, after she found lease documents in a closet. When the complainant asked her husband(Accused No.1) about the lease documents, he left the apartment without giving any answer. He had been in a live-in relationship with a woman before marriage. This had not been disclosed to the complainant.
- (ix) On one occasion, after the complainant's husband (Accused No. 1) had intoxicated himself with weed (Marijuana), the complainant found weed pipe in her husband's pocket. When she told this to her brother-in-law (the Appellant) and his wife, the complainant's husband (Accused No.1) abused her, pushed her and twisted her arm.
- (x) The complainant's husband (Accused No.1) tortured and harassed her with a view to make her leave or to compel her to commit suicide.
- (xi) In June 2019, the complainant's parents-in-law (Accused Nos.2 and 3) went to U.S.A. Instead of solving the complainant's problems, they both (Accused Nos. 2 and 3) started harassing her.
- (xii) The complainant's mother-in-law (Accused No.3) gave the complainant stale food and scolded her without reason. When the complainant protested, her husband (Accused No.1) rebuked her for raising her voice in front of her parents-in-law and insulting them.
- (xiii) The complainant's husband's family told the complainant to go to India, so that they could reform her husband. Accordingly, she came to India in August, 2019.
- (xiv) When the complainant's parents-in-law returned to India in November, 2019 the complainant and her parents tried to contact them (Accused Nos. 2 and 3) and also tried to contact the complainant's husband (Accused No.1). The complainant's parents-in-law (Accused Nos. 2 and 3) avoided the complainant and her parents, giving excuses, and the complainant's husband (Accused No.1) did not take calls.
- (xv) The complainant's parents-in-law (Accused Nos.2 and 3) insulted the complainant's parents when they went to visit the complainant's parents-in-law and

they did not allow the complainant to live in her matrimonial home at Faridabad. They made it clear that the complainant would be allowed to stay in her matrimonial home in Faridabad and be sent to USA only if their dowry demands were satisfied.

(xvi) The accused have collectively ruined the complainant's life by falsely representing that the complainant's husband(Accused No.1) was a vegetarian, a teetotaller and non-smoker, when in fact he was a non-vegetarian, a chain smoker and an alcoholic and also by suppressing his live-in relationship with another woman.

In the entire complaint there is no specific complaint against the Appellant. The only allegations against the Appellant are:

"My mother-in-law and my brother-in-law have taken all gold and have kept with them. I went to USA with one Mangal Sutra and Chain.

I am religious and vegetarian, which was known to Nitin. For the purpose of harassing me, he used to stock non-veg in the refrigerator. Before marriage, he himself stated that he is non-smoker, non-drinker and vegetarian, whereas truth was against this. He used to take intoxicated materials. One time, I found weed pipe from his pocket. When this fact was brought into the notice of my brother-in-law, he instead asked me to accept the culture of Nitin.

One day, Nitin came after doing intoxication (weed marijuana), I thought that I found weed pipe earlier from his pocket and he may not have the habit of weed, then I told about this to his brother and sister-inlaw. On this Nitin started abusing and pushed me while twisting my arm and he had been playing psychological game and had been torturing and harassing, so that either I myself leave him or commit suicide. My brother-in-law threatened me to remain quiet otherwise Nitin is a very bad enemy."

The allegations in the complaint against the Appellant prima facie do not disclose, against the Appellant, any offence under Section 498A of the IPC, which contemplates cruelty, that is willful conduct of such a nature, as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether physical or mental) of the woman.

It is interesting to note that in the complaint, the complainant has given the address of her husband in U.S.A. in addition to his permanent address at Faridabad. The complainant has, for reasons known to herself, not made any reference in her complaint to the fact that the Appellant is a resident of Texas, where he is working. The complaint gives the impression that the Appellant is a resident of Faridabad.

From the complaint itself, it is patently clear that the Appellant does not reside in the same premises as his brother, being the husband of the complainant. The averments in the pleadings in the Courts below read with the complaint show that they do not even live in the same place. The Appellant works in Texas, U.S.A., whereas his brother lives and works in North Carolina.

Section 498A of the IPC is extracted hereinbelow for convenience :-

"498-A. 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."

The complainant has not given any particulars of the jewellery that had allegedly been taken by her mother-in-law and brother-in-law. There is not a whisper of whether any jewellery is lying with the Appellant. It is not even alleged that the Appellant forcibly took away or misappropriated the complainant's jewellery or refused to return the same inspite of request. Taking custody of jewellery for safety cannot constitute cruelty within the meaning of Section 498A of the IPC.

There is not even any allegation against the Appellant of any demand or threat or torture for dowry or property. Failure to control an adult brother, living independently, or giving advice to the complainant to adjust to avoid vindictive retaliation from the Accused No. 1 cannot constitute cruelty on the part of the Appellant within the meaning of Section 498A of the IPC.

There are no specific allegations against the Appellant of misrepresentation or concealment. There is not a whisper of the Appellant's role in the marriage negotiations that took place in India. As observed above, the Appellant who is the elder brother-in-law of the complainant, resides in U.S.A. There is only a general omnibus allegation that all the accused ruined the life of the complainant by misrepresentation, concealment, etc. On the face of the averments in the complaint, the complainant's husband made certain misrepresentations to her. The Appellant is not liable for the acts of cruelty, or any other wrongful and/or criminal acts on the part of his parents or brother.

There is nothing specific against the Appellant except the vague allegation that the Appellant and his mother, that is the complainant's mother-in-law kept her jewellery. The only other allegation is that the Appellant had not done anything, when the complainant had spoken to the Appellant about his brother's conduct and behaviour, he had told the complainant to remain quiet as Nitin could be a very bad enemy. In any event a deed of compromise has now been executed between the complainant and her husband being the Accused No. 1. A copy of the compromise settlement has been enclosed. The Appellant is not party to the settlement.

Having regard to the nature of the allegations, it is not understood how and why the Appellant should have been detained in India. In our considered opinion, the Chief Judicial Magistrate, Kurukshetra, erred in directing this Appellant not to leave the country without prior permission of the Court. The High Court rejected the prayer of the Appellant to leave the country with the following observations :

"I have heard learned counsel for the Applicant-Petitioner No.4, learned State Counsel and perused the record.

This Court vide order dated 13.10.2021 heard the parties and in view of the agreed position directed them to appear before the Magistrate concerned for recording their statement on 28.10.2021. Thereafter, learned Chief Judicial Magistrate, Kurukshetra, sent its report dated 02.11.2021. It has been recorded in the statement that complainant-respondent No.2 had stated that she is not willing to get her statement recorded regarding compromise as the divorce proceeding between her and her husband, namely, Nitin, were pending before the Family Court, Kurukshetra, for 22.02.2022 for

recording of the second motion statement. She stated that she wanted to get her statement recorded regarding compromise as well as under second motion on the same day as there was apprehension of fleeing away of her husband who is working in USA.

As the complainant expressed her non-willingness to get the statement recorded regarding compromise, the statement of the parties could not be recorded. The main petition has been filed for quashing of the FIR on the basis of the compromise arrived at between the parties. As the complainant had the apprehension that the accused might flee to USA hence she expressed her willingness for not recording her statement till 22.02.2022 when the case is fixed before the Family Court for recording the second motion statement.

In view of the statement made by the complainant respondent No.2, this Court finds no merit in the present application for allowing applicant-petitioner No.4 to leave the country during pendency of the present petition. The application being devoid of any merit is hereby dismissed."

The apprehension that the husband of the complainant (Accused No.1) who had been working in the U.S.A. might leave the country cannot be ground to deny the Appellant's prayer to go back to the U.S.A. to resume his duties in a Company in which he has been working for about 9/10 years. The High Court has also not considered the allegations against the Appellant. There is not even any *prima facie* finding with regard to liability, if any, of the Appellant to the complainant. There are no specific allegations against the Appellant.

The order of the High Court denying permission to this Appellant to leave the country is not sustainable in law and is set aside. The order of the Chief Judicial Magistrate is, accordingly modified to the extent that this Appellant has been directed not to leave the country without prior permission of Court. The aforesaid condition shall stand deleted in respect of the Appellant (Accused No.4). It is made clear that the husband-Nitin Sharma shall be bound by all the directions in the order dated 13.09.2021 passed by the Court of the Chief Judicial Magistrate, Kurukshetra.

The instant application was strongly opposed by the State. This Court finds no merit in the contentions of the State. Ex facie, the allegations in the FIR do not disclose any offence under the provisions of the IPC referred to in the FIR. Ms. Monika Gusain stated that charge-sheet has been filed. She has not been able to point out what is the offence so far as this Appellant being the brother of Nitin Sharma, living in the USA is concerned. The repetitive allegations in the complaint are directed against the husband of the complainant, Nitin Sharma (Accused No.1) and his parents, particularly, his mother being the Accused No.2.

The appeal is, accordingly, allowed.

Pending applications, if any, stand disposed of accordingly.