

Neutral Citation No. - 2023:AHC:242455

Judgment reserve on 18.08.2023

Judgment delivered on 22.12.2023

In Chamber

Case :- CRIMINAL REVISION No. - 1079 of 2023

Revisionist :- Smt. Lakshmi Poddar @ Shikha Poddar And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ravi Yadav, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. By means of instant Criminal Revision the revisionist has assailed the judgment and order dated 23.12.2023 passed by learned Additional Chief Judicial Magistrate, Court No.2 Gorakhpur in Complaint Case No.221 of 2004 (Alka Rani Vs. Rajesh Agarwal and others), whereby application for discharge under Section 245 Cr.P.C. moved by accused persons Rajesh Agarwal, Maya Devi, Lakshmi Poddar @ Shikha Poddar and Sunita Tulsyan has been dismissed by the trial court.

2. Heard Sri Anil Kumar Srivastava, Senior Advocate, assisted by Sri Ravi Yadav, learned counsel for the revisionists, Sri Yogendra Singh Yadav, learned A.G.A. for the State and perused the material on record.

3. The facts leading to filing of present revision are that the complainant/respondent No.2 initially moved an application under Section 156 (3) Cr.P.C. before the Court of Judicial Magistrate Ist Gorakhpur on 09.08.2004 which was registered as Misc. Application No.221 of 2004 with averments that her marriage with opposite party No.1 Rajesh Agarwal was solemnized 14.04.2002 according to hindu

rites and rituals in arranged manner. She was send off to her matrimonial home after marriage. However just after her arrival at her matrimonial home her mother-in-law, brother-in-law and sisters-in-law began to tease her for not bringing sufficient dowry and when she objected to this, they gave her beating, she suffered this mall treatment and observed her matrimonial obligations after sometime of marriage she came to know that her husband is suffering from illness. He used to suffer lunatic bouts from time to time and his family members were taking advantage of his situation and did not try to treat him. His family members used to provoke him against her and on their provocation her husband used to beat her. She also came to know that her husband was previously married to one Smt. Meena and she was also subjected to matrimonial cruelty for demand of dowry and ultimately the marriage was broken and FIR was lodged by father of Meena against her husband and family members under Section 323, 504, 506, 498A of IPC. The family members of her husband exerted pressure on her to get her third pregnancy aborted and when she did not agree to this, they abused and harassed her. During that period she knew that these people were trying to kill her and they turned her out from their home after sometime, she reached at her parental place any how. She delivered a male child on 01.11.2003 in private hospital at Gorakhpur. Her in-laws and husband visited her, but did not spend any money. Her sisters-in-law Lakshmi Poddar and Sunita Tulsyan and other family members were also exerting pressure on her to get her pregnancy aborted.

4. Learned court below vide order dated 28.08.2004 directed to register the application under Section 156 (3) Cr.P.C. as complaint and after recording statement of the complainant under Section 200 Cr.P.C. and her witnesses Thakur Prasad Gupta, Ramesh Chandra Sharma under Section 202 Cr.P.C., summoned the accused persons vide order dated 13.05.2005 for charge under Section 498A, 323, 504, 506, 406 of

IPC and Section 3/5 of Dowry Prohibition Act. The accused persons challenged the summoning order with prayer to quash the entire proceedings in complaint case No.221 of 2004 by filing petition under Section 482 Cr.P.C. No.4228 of 2006, which was dismissed vide order dated 12.10.2018 passed by this Court.

5. Learned court below recorded the statement of the complainant Alka Rani under Section 244 Cr.P.C., wherein she was also cross examined at length on behalf of the accused persons at precharge stage. Thakur Prasad Gupta, father of the complainant was also examined as PW2 at the stage of Section 244 Cr.P.C., in which they supported complaint version.

6. Accused Rajesh Agarwal and others moved an application under Section 245 Cr.P.C. on 12.10.2022 with a prayer to discharge them with averment that they have been falsely implicated in the case. Accused Rajesh Agarwal, the elder brother of the husband of the complainant is 80% disabled and bedridden. The complainant and her family members themselves misbehaved with the accused persons. Rajesh Agarwal, the husband of the complainant filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights on 18.02.2004, in which notice was issued to the complainant and said petition was decided on 07.12.2005 ex parte, but the complainant has not complied with the decree of court and did not join the husband. Instead, she filed an application for setting aside the decree. On 17.03.2004 the complainant and her family members assaulted the husband Rajesh Agarwal and declined to send the complainant with him. After which he lodged an FIR vide C-6/4 under Section 406, 506 IPC against the complainant and her parents, in which chargesheet has been filed. The present complaint was filed by the complainant with

false allegations against the accused persons and the accused persons are liable to be discharged.

7. Learned court below vide impugned order dated 23.12.2022 considered and facts and evidence of the case. The facts of the case as well as the evidence adduced by the complainant at the stage of Section 244 Cr.P.C. in light of documents available on record and dismissed the application under Section 245 Cr.P.C. with finding that there is ample evidence against accused persons at this stage for framing charge against them and putting demand prior.

8. Feeling aggrieved by the impugned order passed by learned Magistrate the present revisionists who are married sisters-in-law (Nanads) of the complainant have preferred present revision with averments that revisionists were already married at the time of marriage of complainant and their brother Rajesh Agarwal. The Omnibus and general allegations are levelled against them in the complaint only with a view to harass them, as they are sisters of the husband of the complainant. However, revisionist No.1 Smt. Lakshmi Poddar alias Shikha Poddar was residing in Calcutta at the time of incident and Smt. Sunita Tulsyan was residing in district Thane, Maharashtra at that time. They are presently residing in Hyderabad and Maharashtra alongwith their husband and family.

9. Learned counsel for the revisionists submitted that no specific allegation has been made against the revisionists in complaint as well as in evidence of PW1 and 2 recorded by the court below, they are not supposed to be beneficiary of any demand of dowry made by the husband or his immediate family as alleged. They have not been attributed any specific role in the offence, learned court below dismissed the discharge application with respect to present revisionists also in mechanical manner without considering the role attributed to

accused persons. They are not concerned with matrimonial discord between the complainant and her husband. They have been implicated as accused in complaint only with a view to harass them due to their relationship with the husband of the complainant.

10. Per contra, learned counsel appearing for respondent No.2 submitted that the revisionists although married sisters-in-law of the complainant have played active role in harassment and torture of the complainant. They were also hand in glove with co-accused persons in demand of dowry and subjecting the complainant to matrimonial cruelty. The complainant and her witnesses had given ample evidence regarding complicity of the accused persons including the revisionists in their sworn testimony before the court under Section 244 Cr.P.C. The grounds taken in discharge application are misleading and baseless. The revision deserves to be dismissed.

11. Learned counsel for the revisionists placed reliance on judgment of Hon'ble Supreme Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; AIR 2022 SC 820**, this was a case under Sections 341, 323, 379, 354, 498A read with Section 34 of Cr.P.C. The accused persons had challenged the summoning order under Section 482 Cr.P.C. before the High Court, but same was dismissed by High Court. By the impugned order Hon'ble Supreme Court allowed Special Leave to Appeal against order of High Court with observations that “ therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the Accused Appellants, it would be unjust if the Appellants are forced to go through the tirbulation of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal

also inflicts severe scars upon the Accused, and such an exercise must therefore be discouraged.

12. The Hon'ble Supreme Court also observed in aforesaid case as under:-

“12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498A of Indian Penal Code was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A Indian Penal Code as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in *Rajesh Sharma and Ors. v. State of U.P. and Anr. (2018) 10 SCC 472, has observed:*

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the Accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

14. Previously, in the landmark judgment of this Court in **Arnesh Kumar v. State of Bihar and Anr.(2014) 8 SCC 273**, it was also observed:

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A Indian Penal Code is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in **Preeti Gupta and Anr. v. State of Jharkhand and Anr. : (2010) 7 SCC 667**, it has also been observed:

“32. It is a matter of common experience that most of these complaints Under Section 498A Indian Penal Code 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 are also a matter of serious concern.

33. The learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal 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 498A 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 fiber, peace and tranquility 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 visualized 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 husband and all his immediate relations is also not uncommon. At times, even after the conclusion of 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 complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In **Geeta Mehrotra and Anr. v. State of U.P. and Anr. : (2012) 10 SCC 741**, it was observed:

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao v. L.H.V. Prasad and Ors.* reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the

young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as Accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes."

17. Recently, in *K. Subba Rao v. The State of Telangana* : (2018) 14 SCC 452, it was also observed that:

"6 . The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

18. *The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498A Indian Penal Code and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the Accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them."*

13. Section 245 of Cr.P.C. reads as under:-

245. When accused shall be discharged.

" (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

14. The revisionists are married sisters-in-law (Nanad) of the complainant. The complainant has admitted in her cross examination under Section 244 Cr.P.C. that present revisionists were already married when she came to know after marriage and they were living with their respective spouse, they have taken specific case that they were implicated in the case wrongly in a sense that matter pertains to inter se dispute between Rajesh Agarwal and the complainant.

15. Omnibus and general allegations are levelled against the accused in the complaint as well as in the evidence of the witnesses recorded under Section 244 Cr.P.C. together with co-accused persons, accused Rajesh Agarwal, the husband of the complainant, Maya Devi mother-in-law, Krishna Mohan Agarwal brother-in-law (Jeth) and Suman Agarwal (Jethani). Discharge application under Section 245 Cr.P.C. was filed by four accused persons barring Jeth and Jethani of the complainant, which was dismissed by impugned order dated 23.12.2022 by learned trial court with observations that there is sufficient grounds to put the accused persons on trial for charges levelled against them. Out of four accused persons, whose discharge application has been dismissed, by impugned order, this revision has been preferred only by two accused Smt. Lakshmi Poddar and Smt. Sunita Tulsyan who are married sisters-in-law of the complainant. They are residing at distant places, there is no allegation in the complaint or in statement of the witnesses that revisionists were living together with the complainant and her husband at their parental place.

16. This is admitted fact that they were married prior to the marriage of Rajesh Agarwal and complainant. The complainant has stated in her

evidence that her sisters-in-law are greedy people and used to visit her matrimonial home and gave her beating, and all the accused persons got her pregnancy aborted. But there is no medical evidence in support of this version.

17. The case of the revisionists is squarely covered by judgment of Supreme Court in **Kahkashan @ Sonam and others Vs State of Bihar and others and in Geeta Mehrotra and another Vs. State of U.P.** in which Hon'ble Apex Court has filed the grave situation where all the family members and relatives of husband are roped in complaint under Section 498 of IPC by way of general and omnibus allegation made in course of matrimonial dispute.

18. The court below, while dismissing the discharge application has failed to notice the role of the revisionists and the probability of their false implication, as these are married sisters-in-law of the complainant who are stated to have been living at far away place during the period when offence of matrimonial cruelty and demand of dowry was practised against the complainant. They are not supposed to be beneficiary of any demand of dowry made by co-accused persons.

19. The application for rejection of discharge application requires reconsideration in respect of the present revisionists in light of foregoing discussions and the judgments of Hon'ble Supreme Court cited above.

20. The revision stands partly **allowed**.

21. The impugned order passed by learned court below is partly set-aside, in so far as it relates to present revisionists and learned Magistrate is directed to consider the prayer for discharge made by present revisionists a fresh in accordance with law after giving opportunity of hearing to both the sides.

Date :- 22.12.2023

Ashish/-