

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

+ **W.P.(CRL) 1634/2009**

% Pronounced on: January 7, 2010

SHRI PREM SAGAR SAWHNEY AND ORS. Petitioner
! Through: Ms. Nandni Sahni, Adv.

versus

\$ STATE & ANR. Respondents
! Through Mr.Akshay Bipin, Advocate.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? Yes

: V.K. JAIN, J. (ORAL)

1. This is a petition seeking quashing of FIR No.211/99 lodged by respondent No.2 at Police Station Keshavpuram under Sections 498A/406/34 of IPC. Quashing of FIR has been sought on the grounds that (i) the husband of the complainant, who was the main accused, has since expired and (ii) the complainant has already stated before this Court that she has no grievance against other family members.

2. Respondent No.2, who is present in the Court, states that considering the conduct of the petitioners, she is not in a position to enter into a settlement with them.

3. It has been alleged in the FIR that the husband of the complainant, Shri Rajiv Sawhney, her mother-in-law Smt. Prem Sawhney, her brother-in-law Shri Rajiv Sawhney, her sister-in-law Smt. Poonam

Sawhney, her father-in-law Shri Prem Sagar Sawhney and her brother-in-law Shri Rajesh Sawhney, had been treating her with physical and mental cruelty so as to compel her to commit suicide and to cause injury and danger to her life, limb and health. It has been further alleged that the complainant has been harassed and coerced by the above named accused persons who demanded and took dowry, threatened to kill her, abused her, blackmailed her and misappropriated her entire istridhan including gold jewellery and cash which they refused to return despite demands. It was further alleged that the complainant was finally thrown out of the matrimonial home on 5.4.1999. The list of articles of istridhan claimed by the complainant from the accused persons was also annexed to the FIR lodged by her. The value of her istridhan is claimed to be Rs.13.84 lakhs. It was alleged in the FIR that the husband of the complainant, use to beat her on being instigated by accused No.2 to 6, as a result of which, she could spent only 9 to 10 months in the matrimonial home. It was alleged that accused No.5 Shri Prem Sagar Sawhney, father-in-law of the complainant, purchased a flat in August, 1996 and there was a demand of Rs.2 lakhs for purchase of that flat which resulted in a serious fight on 2.11.1996.

4. There are a number of specific allegations against the petitioners including that (i) on 28.8.1997, the husband of the complainant instigated by his father turned the complainant out of the house along with her infant; (ii) on 10.12.1997, she was beaten by her husband and brother-in-law Rajesh Sawhney; (iii) on 4.4.1999, the husband instigated by and in the presence of mother-in-law, brother-in-law Rajiv Sawhney, sister-in-law

Smt. Poonam Sawhney and father-in-law Shri Prem Sagar Sawhney threatened to consign the complainant in the tandoor and finish her off finally; (iv) on 5.4.1999, all the accused persons poured kerosene oil on the complainant and attempted to repeat the tandoor episode by burning her alive. At that time, Rajiv Sawhney caught hold of the arms and hands of the complainant whereas accused No.4 Poonam Sawhney was standing on the right side and was kicking the complainant with her full. Accused No.2 Prem Sawhney stood at the door blocking it and keeping a vigil on anybody coming, while accused No.5 Prem Sagar was eating grapes and witnessing the horrendous episode which was happening in his presence. When the complainant freed herself from the clutches of her husband and ran towards the lobby, accused Rajiv Sawhney pulled her back by catching hold of her hair. Accused Raju Sawhney and Poonam Sawhney also followed her and brought the complainant back to the room and locked it from outside. The complainant was rescued by her mother-in-law, who reached there. In the meanwhile, she was abused by her husband.

It was also alleged in the complaint that the accused persons were demanding Rs.1 lakh for the daughter – Simran and another Rs.1 lakh for expansion of their business. They also demanded transfer of a house owned by the mother of the complainant in Udaipur, in the name of Rajiv Sawhney, husband of the complainant.

5. At this stage, it is not permissible for this Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, to go into the truthfulness or otherwise of the allegations made in the FIR. For the purpose of this petition, the allegations made in the FIR have to be

taken as correct and on their face value. The FIR and the criminal proceedings arising therefrom can be quashed only if it is shown that the allegations made in the FIR even if it is taken as true and on their face value do not constitute commission of an offence. It is not permissible for this Court in exercise of its writ jurisdiction or its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to go into these disputed questions of fact and undertake an exercise to determine whether the allegations are true or not. These are the matters which are required to be dealt with by the trial court at an appropriate time.

6. In State of Haryana vs. Bhajan Lal 1992 Supp. (1) SCC 335, where the Hon'ble Supreme Court indicated certain categories where the power under Section 482 of Code of Criminal Procedure could be exercised by the Court. These categories are as under:-

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only

a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal (sic) proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. In *R.P. Kapur vs. State of Punjab* AIR 1960 SC 866, the Hon'ble Supreme Court summarized the following as some of the categorized cases where the inherent powers can and should be exercised to quash the proceedings.

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

8. Since there are accusations constituting offences punishable under Sections 498A/406 of IPC read with Section 34 thereof against the petitioners in the FIR and the statements of witnesses recorded during investigation, no ground for quashing the FIR and the criminal proceedings arising therefrom is made out.

9. The chargesheet is stated to have been filed in November, 1999 and the case is still at the stage of arguments on charge. In these circumstances, the trial court is directed to take up the trial of this case on priority basis and as far as possible, dispose it of within one year from today. This is subject to the petitioners rendering full cooperation to the trial court and not seeking adjournment on any ground whatsoever.

The matter is stated to be fixed before the trial court on 25.3.2010 for arguments on charge. The trial court will hear arguments on charge on that date and pass an appropriate order soon thereafter.

Petitioners No.1 and 2, who are present in the Court, assure that their grand-daughter can meet them at any time till 18.1.2010, when they are in Delhi.

W.P.(CRL) 1634/2009 stands disposed of with these directions.

V.K. JAIN,J

JANUARY 07, 2010
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