

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(Crl.) No. 1217/2007 and Crl.M.A.No. 10498/2007

Reserved on: 17.9.2007

Date of Decision: 09.10.2007

Harvinder Singh Khurana and Ors.....Petitioners

Through : Mr. Atul Sharma, Advocate and

Mr. Raghunath Menon, Advocate

versus

\$ The State (NCT of Delhi) and Anr. Respondents

Through : Ms. Mukta Gupta, Advocate and Ms. Rajdipa Behura, Adovate

CORAM: JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

This petition under Article 226 read with Section 482 Cr.P.C. for quashing of FIR No. 1198/06 under Section 498A/406/34 IPC registered at PS Lajpat Nagar filed by respondent no. 2 against the three petitioners. Petitioner no. 1 is husband of the respondent no. 2 and while petitioners no. 2 and 3 are jeth and jethani (brother-in-law and his wife) of respondent no. 2.

2. The petitioner no. 1 was married to respondent no. 2 on 19th July, 1992. They have two children. A perusal of FIR shows that the complainant/respondent no. 2 made allegations in FIR that at the time of marriage her parents had given dowry but the petitioners were not satisfied with the dowry given and she was taunted that the dowry articles were not up to the mark. The elder brother of her husband Parvinder Singh Khurana and his wife played a leading role in causing harassment, humiliation to the respondent no. 2 by describing the dowry articles as sub-standard and insufficient as a result that the relations between her and her husband were strained and never cordial. She was also asked to bring Rs. 2 Lac from her parents for enhancement of their business, which demand could not be fulfilled. She continued to live with the petitioner hoping that happy days may come and good sense may prevail upon but it did not happen. She made specific allegations against her husband in the FIR in the following terms: That the husband of the applicant Sh. Harvinder Singh has been indulging in bad habits like drinking, womanizing etc. The applicant also made her best efforts that he should leave his bad habits but all in vain. He is daily drinker and some time, he come to house at objectionable hours in the dead night and dead drink on being objected by the applicant, he always created rowdy scenes even annoy the neighborers and to the applicant. He is in habit of hurling filthy abuses and he is also in the habit of beating physically to the applicant and thereby caused physical and mental tortures. It has been learnt by the applicant that the husband of the applicant also keeps a concubine and reside with her at Panipat. The applicant has been subjected to cruelties to the extent that he has created serious horror in her mind and she has a serious apprehension to her life. She further made allegations in the FIR in the following terms: He stopped the Taxi and brought out can of petrol etc. and he wanted to throw the petrol etc. over the applicant but fortunately, the parents of the applicant helped her in getting her inside the door and bolted. He tried to throw the petrol and some petrol poured on her clothes. When he failed in his attempt, then out of frustration, he poured the petrol himself and lit himself. As result of that he sustained burn

injuries and he was removed by the police who had come immediately at the spot and he was admitted to Civil Hospital, Anandpur Sahib but later on he was shifted to P.G.I. Chandigarh. The entire expenses were borne by the father of the applicant. Later on, his family members came at the Chandigarh Hospital and he tried to blame the parents of the applicant. However, the police registered a case u/s 309 IPC at PS Anandpur Sahib vide FIRNo. 75/01 dated 22.8.2001.

3. It is undisputed that the respondent no. 2 had also filed a petition under Section 10 of Hindu Marriage Act for judicial separation from her husband. Copy of this petition being HMA No. 2/2003 is placed on record. In this petition, respondent no. 2 stated that relations between her and her husband became strained after about two years of marriage, however, the dispute between respondent no. 2 and her husband was amicably settled by mother-in-law. After the death of mother-in-law her husband again started teasing and maltreating her on flimsy matter specially after consuming liquor and started beating her and threw her out of matrimonial home along with her daughter. There was intervention of relatives and she was sent to her matrimonial home on the assurance of her husband that he would behave properly. Even after that, behavior of her husband did not improve and he gave threats to burn her forcibly by pouring kerosene oil. She went to her parents' house and narrated about these threats to her parents. Again the matter was got resolved and petitioner no. 1 again promised not to drink liquor in future, not to misbehave and give threats and respondent no. 2 joined his company. However, the maltreatment of respondent no. 2 at the hands of petitioner no. 1 continued and his threats also continued with the result that she had to leave the company of petitioner no. 1 along with children on 24th May, 2001. She got a job of teacher in Anandpur Sahib and got admitted her children there and she started living there since May, 2001.

4. Nothing is stated by respondent no. 2 in her petition under Section 10 about any dowry demand made by any of the petitioners or any cruelty perpetuated on her by petitioners no. 2 and 3 or any role played by them. A perusal of petition would show that since 1994 respondent no. 2 and petitioner have been living separately; first they lived at G-1 Railway Colony Shahdara, then they lived at Sector 13, Rohini and then they lived at Karol Bagh. Petitioner no. 2 and 3 had not been living with them since 1994 when they shifted to Rohini. Respondent no. 2 had also filed an FIR at District Ropar on 22.8.2001 in respect of incident of pouring petrol on petitioner no. 1 on himself and in that FIR she gave following account: I was married to Harvinder Singh Khurana @ Goldi son of Sh. Kulwant Singh Khurana respondent of 14/1076, Naiwalan Karol Bagh, New Delhi on 19th July, 1992. My husband is running a shop of spare parts of Maruti. My husband daily use to harass me after taking liquor after my marriage. I inform the same to my parents, my parents tried to convince to him, but he did not understand. Resulting which I along with my children came to Anandpur Sahib to my parents from Delhi in the month of May 2001. I am working as private teacher in Mata Sahib Kaur academy school, Anandpur Sahib. My two children are studying here. My husband so many time told me on phone I shall brought back my children, incase you did not give the children to me, I shall make suicide before you. On 21.8.2001, I along with my children went to Mata Sahib Kaur Academy Anandpur Sahib for teaching, then my husband came to academy in my class where I was teaching to the children, I told him it is not permitted to come in the school, you can talk me outside the school gate after school time. After holiday return back to my house along with children through school bus. It was 4, 'O'clock from leaving bus near my house gate my husband was coming towards behind me who was having can in his hand who told me that children be handed over to him failing which I shall throw kerosene oil upon myself and set fire, I told him that I shall not permit the children to go with you in this condition, then in my presence he poured kerosene oil upon him and set fire through match sticking front of me.

5. After the incident of burning of petitioner no. 1 petitioner no. 1 moved Punjab and Haryana High Court making allegations that he was set on fire by his in-laws and he had not made attempt to commit suicide. Punjab and Haryana High Court vide order dated 24.1.2002 gave directions to the SHO of PS Anandpur Sahib to investigate/inquire into the version given by petitioner no.1, as contained in his statement made to judicial magistrate and take further action according to law.

6. It is obvious that the present FIR is contrary to the earlier complainants by the respondent no. 2 to the Courts. The allegations made in the present FIR in respect of her harassment by petitioners no. 2 and 3 for dowry or taunting for dowry do not stand anywhere. She has been living separate with her husband since 1994. In her complaint she stated that her husband was a drunkard and womanizer and maltreating her because of his drinking habits. Her husband attempted to commit suicide in her presence when she refused to handover the children to him. It was not her case that her husband tried to pour kerosene oil on her as alleged in the present FIR.

7. Although this Court must be loath in quashing FIR and FIR should be quashed in rarest of rare cases. FIRs can be quashed only in those cases where either the criminal justice system is being put to gross misuse and issued as a tool to settle the scores by making such allegations which can stand even the initial scrutiny by the Court and are made malafidely or in those circumstances where, if all facts are considered as true, still no commission of an offence is revealed. In the present case, the respondent no. 2/complainant was living separate from her husband since May, 2001. She was living at Anandpur Sahib and alleged incident of attempt to commit suicide took place in August 2001 and is being investigated there. Her husband lodged a complaint that it was not an attempt to suicide but it was an attempt to killing. During pendency of these complaints she filed a petitioner under Section 10 of Hindu Marriage Act for judicial separation from her husband, her husband filed a petition under Section 9 of Hindu Marriage Act. In none of these complaints or petitions there was even a talk of harassment for dowry or involvement of any other family member in the dispute between husband and wife. Suddenly in 2006 when she filed this FIR she implicated elder brother and his wife in this FIR making allegations of dowry demands, despite the fact that they were living separate from them since 1994.

8. It is apparent that this FIR was a gross misuse of criminal justice system. Respondent no. 2 in order to settle the score with her husband implicated other family members for dowry harassment while there was no complaint prior to that and she was married to petitioner no. 1 for about 14 years before lodging of this complaint and had two children. Her main allegation even in FIR are against her husband, who has been stated to be a drunkard and womanizer. I consider that FIR lodged by the respondent no. 2 against petitioners no. 2 and 3 regarding her harassment for dowry or taunting is a malafide and needs to be quashed. I, therefore allow this petition and criminal proceedings arising out of FIR No. 1198/2006 PS Lajpat Nagar in respect of petitioners no. 2 and 3 are hereby quashed. As far as petitioner no. 1 is concerned, serious allegations of cruelties being perpetuated by him from the very beginning of his marriage are stated in the FIR against him and the police shall investigate the crime vis-a-vis petitioner no. 1.

The writ petition stands disposed of with above directions.

SHIV NARAYAN DHINGRA, J

October 09, 2007 .