

IN THE HIGH COURT OF DELHI: NEW DELHI

+ **CRL. M.C. NO. 72/2011**

% Judgment decided on: 3rd May, 2011

NEERU SHARMA & ORS.

....PETITIONERS

Through: Ms. Sima Gulati and Ms. Sugam Puri, Advs. for the petitioner with petitioner No 1 in person.

Versus

THE STATE (NCT, DELHI) & ANR.

....RESPONDENTS

Through: Mr. U.L. Watwani, APP for the State with SI Pratap Singh, P.S. Kirti Nagar.
Mr. Suresh Sisodia, Adv. for respondent No. 2 with respondent No. 2 in person.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (Oral)

1. By way of present petition under Section 482 Cr.P.C., petitioners seek setting aside of summoning order dated 30th September, 2010 passed by the learned Metropolitan Magistrate as also quashing of the complaint case titled "Dhirendra Singh Chhaunkar vs. Neeru Sharma and Ors.", pending in the court of Metropolitan Magistrate.

2. Respondent No.2 has filed a complaint under Section 200 Cr.P.C. before the Metropolitan Magistrate (Trial Court) praying therein that petitioners be summoned, tried and punished for the offences under Sections 323/324/329/379/406/417/452 /468/506 and Section 120-B IPC. After recording pre-summoning evidence Trial Court has summoned the petitioners under Sections 379/506/34 IPC.

3. Petitioner No. 1 is wife; whereas petitioner No. 2 is father-in-law, petitioner No. 3 is mother-in-law, petitioner No. 4 is sister-in-law and petitioner No. 5 is brother-in-law of respondent No. 2 (complainant). As per the complaint, petitioners Nos. 2 to 4 compelled the respondent No. 2 to marry petitioner No. 1 on 8th December, 2009 in Arya Samaj Mandir, Kirti Nagar, New Delhi. After the marriage, petitioner No. 1 and respondent No. 2 started living together. However, petitioner No.1 started blackmailing, torturing and humiliating respondent No. 2 at the instigation of petitioner Nos. 2 to 5. She asked the respondent No. 2 to buy a flat for the petitioner Nos. 2 to 5 in the same locality. She told him to pay ₹20,000/- p.m. for maintenance of her parents. She threatened that in case her demands were not met, she would commit suicide and falsely implicate the respondent No.2. On 11th April, 2010, respondent No. 2 found the gold and diamond jewelry of his deceased mother and ₹50,000/- in cash missing from the almirah. When he enquired from the petitioner No. 1 as to where the jewelry and cash had

vanished, she replied that she had taken out the same at the instigation of her mother and sister and had passed it on to them. On 13th April, 2010, when respondent No. 2 asked the petitioner No. 1 to return the jewelry and cash, she called petitioner Nos. 2 to 5, who came there along with 5-6 muscle men and quarreled with him and beat him up. Thereafter, petitioner No. 1 left the matrimonial home with them. On 23rd April, 2010, she again visited the matrimonial home along with petitioner Nos. 2 to 4 and asked him to transfer all his movable and immovable properties in her name. They threatened him with dire consequences in case their demands were not met. He approached police station Sunlight colony but no action was taken. Thereafter, petitioner No. 1 filed a complaint in Crime Against Women Cell (CAW Cell) on 4th June, 2010 alleging therein that she had been treated with cruelty by the respondent No. 2 on the point of dowry.

4. Learned counsel for the petitioners has vehemently contended that present complaint has been filed by the respondent No. 2 as a counterblast and in order to put pressure on the petitioner No.1. Petitioner No. 1 was treated with cruelty by the respondent No. 2. Sufficient dowry was given by the parents of petitioner No.1; however, respondent No. 2 was still not satisfied and demanded more dowry. He demanded ₹5 lacs from her on 9th /10th April, 2010. Respondent No. 2, with the help of his brother and sister, gave beatings to petitioner No. 1

in order to compel her to bring money from her parents. Brother-in-law and sister-in-law of petitioner No. 1 caught hold of her while friend of respondent No. 2, namely, Ganesh threw ash on petitioner No. 1 after performing some puja. Petitioner No. 1 was molested by the brother-in-law of respondent no. 2. On 13th April, 2010, petitioner no. 1 was beaten badly and was forced to leave the matrimonial home. Respondent No. 2 appeared before the CAW Cell on 11th June, 2010, 21st June, 2010, 30th June, 2010 and 7th July, 2010. He did not make any complaint before the concerned officials of the CAW Cell that his marriage was forcibly performed with petitioner No. 1 by extending threats, inasmuch as, during the arguments of bail application he took up a new plea that his marriage was not performed with the petitioner no. 1 and all the documents in this regard were forged and fabricated. In nutshell, counsel for petitioners has contended that present complaint has been filed in order to harass and victimize the petitioners. She has further contended that no prima facie case was made out against the petitioners since all the articles of either of the spouse remain in joint possession of husband and wife and even if wife takes some of the articles no case of theft can be said to have been made out. Reliance has been placed on ***Neelam and Ors. vs. State, 1988 (1) Crimes 545, 34(1988) DLT 152*** and ***Harmanpreet Singh Ahluwalia and Ors. vs. State of Punjab and Ors., JT 2009(6) SC 375.***

5. As against this, learned counsel for respondent No. 2 has contended that complaint filed by the petitioner No. 1 is a counterblast to the complaint filed by respondent No. 2. At this nascent stage complaint against the petitioners cannot be quashed. Allegations and counter allegations leveled by the parties have to be tested during the trial.

6. I have considered the rival contentions of both the parties. It is no doubt true that powers under Section 482 Cr.P.C. are to be exercised sparingly and only in exceptional cases and not as an appellate/revisional court. But, at the same time, it can be exercised to prevent the abuse of process of court. In case it emerges from the record that the prosecution has been launched in order to harass the accused by the complainant or to wreak personal vendetta, then High Court will be well justified in quashing the complaint in exercise of inherent powers under Section 482 Cr.P.C. If the court comes to the conclusion that proceedings initiated by way of criminal complaint were uncalled for and unjustified, then High Court is entitled to quash the proceedings. In ***State of A.P. vs. Gourishetty Mahesh and Ors., (2010) 11 SCC 226***, Supreme Court has held that though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material is there to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

7. In the facts of this case, the present complaint, pursuant whereof FIR in question has been registered, appears to be a counterblast to the complaint of the petitioner No. 1 before the CAW Cell. Present complaint appears to have been filed by respondent no.2 in order to exert pressure on petitioner No. 1 to come to terms with him. This fact is evident from the allegations made in the FIR. Though respondent No. 2 claims that his marriage with petitioner No. 1 was solemnized by petitioner Nos. 2 to 5 under threat on 8th December, 2009, however, no such complaint was filed immediately after the marriage. Respondent No. 2 claims that petitioner No. 1 had removed the jewelry and ₹50,000/- in cash on 13th April, 2010 from the Almirah. Immediately after the incident no prompt action was taken to lodge the complaint. No such plea was even taken before the CAW Cell though he had participated in the proceedings as

many as on five occasions. He has filed this complaint only after the complaint was filed by the petitioner no. 1 in the CAW Cell. That apart, he has virtually roped in entire family of his wife. This itself shows that the present complaint has been filed maliciously in order to exert pressure on the wife to come to terms with him.

8. If the matter is examined from another angle then also ingredients of offence of theft are not disclosed. For constituting the offence of theft, essential ingredient is removal of a movable article from somebody's possession and that removal must be in pursuance of dishonest intention. At the time of alleged incident of theft, husband and wife were living together. All the articles, including jewelry, were lying in the Almirah which was in their joint possession. Thus, it was for their common use and enjoyment. It is not the case that wife had taken any jewelry after breaking open the Almirah. Thus, even if jewelry and cash had been taken by the wife, same being in joint possession of the spouses, the offence of theft is not made out.

9. For the foregoing reasons, complaint case No. 113/2001 titled as "Dhirendra Singh Chhaunkar vs. Neeru Sharma and Ors." is quashed.

10. Petition is disposed of in the above terms.

A.K. PATHAK, J.

MAY 03, 2011/rb