

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 450 OF 2009
(Arising out of S.L.P. (Crl.) No.5417 of 2006)

Samira Khanum

...Appellant

Vs.

Md. Asfar Towheed and Anr.

...Respondents

J U D G M E N T

DR. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by the learned Single Judge of the Patna High Court allowing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Prayer was made by the respondent no.1 to quash the order dated 30.11.2004 passed by learned Sub-Divisional Judicial Magistrate, Patna, in Complaint Case No.2523(C)/2004, whereby direction was given to issue summons against the respondent no.1 and others for facing trial for alleged commission of offences punishable under Sections 498-A and 406 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961(in short 'D.P. Act').
3. The factual position in a nutshell is as follows:

The case of the complainant (O.P. No.2) is that she was married to the respondent no.1 on 24.10.1999 at Patna according to the Muslim Law. The other two accused are his father and mother. After marriage, on the same day she went to her matrimonial house. At the time of marriage several articles, ornaments, cash etc. amounting to Rs.5 lacs were given as gift. The respondent no.1 and his parents were not happy with the same and wanted more dowry. The parents of the respondent no.1, taunted her for insufficient dowry. After 15 days of the marriage, the respondent no.1 went to America where he was doing a job of Software Engineer and in the meantime the complainant on 9.11.1999 returned to her parental house as the parents of the respondent no.1 compelled her to leave the matrimonial house by their misbehaviour and cruel attitude. Respondent no.1 thereafter sent a visa to the complainant and the complainant went to America on 18.4.2000. There she found her husband having illicit relationship with an American girl named "Dolly". She seriously objected to this relationship. The respondent no.1 told her that in America it was status symbol to have a girl friend and he demoralized her saying that she belongs to an orthodox and backward family. The complainant anyhow stayed there for about a year and returned to India with the respondent no.1 on 19.8.2001. During their stay at Patna her parents tried to convince the husband to refrain from such relationship with another for cordial conjugal life. He promised to mend himself. Both of them again went to U.S.A. after staying for five weeks in Patna. During this stay all the accused persons asked the complainant to bring Rs.12 lacs from her parents for purchase of a flat in the name of complainant herself. The father of the complainant promised on 19.9.2001 to give Rs.7 lacs provided the flat was purchased in the name of the complainant. Subsequently, her father out of love and affection gave Rs.7 lacs to the parents of the father of the respondent no.1 in various installments. Despite this, all the accused were adamant for further Rs.5 lacs and for non-fulfillment of that amount the accused persons brutally assaulted her both mentally and physically.

It was further alleged that after going to America the respondent no.1 despite his

promise tried to re-establish his relationship with the above girl, and on protest by the wife assaulted her. He developed the habit of taking wine and wasting time in clubs and on objection she was subjected to cruelty. As a result of multi-dimensional tension she suffered miscarriage on 13.5.2003. She was also not allowed to meet any of her relatives residing in U.S.A.

The respondent no.1 then on request of the complainant brought her to India. On 30.8.2003, the respondent no.1 after reaching India went to Hyderabad and asked the complainant to go to her parental house at Patna. During this stay he did not come to Patna. So the complainant herself went to Hyderabad and in spite of atrocities on her, she along with the respondent no.1 on 14.9.2003 returned to America where he continued his torture and on 22.3.2004 she was forcibly sent to India and since then she was living in Patna. It is also alleged that when she returned to India the respondent no.1 sent E-mail to her not to return to America without his permission and also directed her to cancel the return ticket. The complainant on 2.7.2004 through E-mail requested the respondent no.1 to reconsider his decision but to no effect and suddenly replied that unless his parents' desire was fulfilled no question of sympathy arises and on 10.9.2004 asked her father to make payment of Rs.5 lacs to his parents by the next month positively and on that date her father talked to the father and mother of the respondent no.1 and showed his inability.

It was also alleged in the complaint petition that during his stay in America, the respondent no.1 had pressurized her on several occasions to collect at least 50,000 American dollars from Phuphi and Phupha residing there and on refusal by her the respondent no.1 himself told her Phupha on phone to send 50,000 dollars, otherwise the complainant would be in trouble.

After filing of the complaint, the complainant was examined on S.A. She also

examined witnesses in enquiry under Section 202 of the Code. Learned S.D.J.M. after perusing the complaint petition, the statement of the complainant on S.A. and the statement of the witnesses examined by the complainant, passed the order which was impugned before the High Court.

Before the High Court it was contended on behalf of the present respondent no.1 that the allegations were false. It was stated that the respondent had divorced the complainant on 12.9.2004 and, therefore, the case had been filed as a counter blast with mala fide motive. It was further submitted that the alleged torture committed by the petitioner before the High Court on the complainant in America even if accepted as true, the same was relatable to the alleged relationship with an American girl and had nothing to do with the amount of dowry. Certain other factual aspects were alleged to show that the ingredients of Section 498A IPC were not made out and there was no allegation of breach of trust punishable under Section 406 IPC. The application filed by the respondent no.1 was disposed of by the High Court after noticing the rival submissions as follows:

“Learned counsel for O.P. No.2 defended the order. I find force in the submission of the learned counsel for the petitioner and on the reasons mentioned by him I also find that the alleged demand or receipt of dowry by the petitioner is false and mala fide on account of divorce of the complainant by the petitioner and that the alleged torture by the petitioner was not in connection with unlawful demand of Rs.15 lacs and was not such as to drag O.P. No.2 to commit suicide and that there is no allegation of breach of trust against the petitioner.

In the result, this application is allowed. The impugned order as regards the petitioner is set aside.”

4. It is stated by learned counsel for the appellant that the order is practically non-

reasoned and no reason has been indicated as to why the respondent's prayer was accepted and that the parameters for exercise of power under Section 482 of the Code have not been kept in view what has been stated in State of Haryana and Ors. v. Bhajanlal and Ors. (1992 Supp (1) SCC 335).

5. Learned counsel for the respondent no.1 supported the order of the High Court.

6. We find substance in the plea of the learned counsel for the appellant that the High Court has not indicated any basis or reason for exercising jurisdiction under Section 482 of the Code. The application was disposed of in a casual manner.

7. Therefore, the order of the High Court is clearly indefensible and is, accordingly, set aside. However, we make it clear that we have expressed no opinion on the merits of the case which are to be adjudicated.

8. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 06, 2009

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLANT JURISDICTION**

CRIMINAL NO. 450 OF 2009
(arising out of SLP(Cr.) No. 5417/2006)

SAMIRA KHANUM

...APPELLANT

VS.

MD. ASFAR TOWHEED AND ANR.

..RESPONDENTS

ORDER

In our judgment dated 6/3/2009, the following line is added at the end of Para 7.

**“The matter is remitted to the High
Court for a fresh consideration”.**

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

**New Delhi,
March 20, 2009.**