

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1182-1184 OF 2010
(Arising out of SLP (Crl) 6091-6093 of 2009)

Vijeta Gajra

... Appellant

Versus

State of NCT Of Delhi

... Respondent

JUDGMENT

V.S. SIRPURKAR, J.

1. Leave granted.

2. The appellant herein challenges the order passed by the High Court whereby the petition filed by her was dismissed. The said petition was filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code for quashing the FIR No. 138/08 dated 07.08.2008 for offences under Section 498A and 406, Indian Penal Code in the Chitranjan Park Police Station.

3. This FIR was lodged by one Gunjan Sujanani, wife of one Rohit Sujanani. It is a long document wherein the complainant Gunjan Sujanani

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stated about her marriage with Rohit on 08.07.2003 and he being a resident of Nigeria. It was claimed that before the marriage, Rohit had introduced Gunjan to one Mr. Sham and Mrs. Lavina Daswani as his foster parents and also said that he had two foster sisters, namely, Vijeta Daswani (Vijeta Gajra- the appellant herein) who is a resident of Indore, Madhya Pradesh and the other being one Ms. Ritika Daswani, who resided with her mother in London. There are allegations made about the demand of dowry against the husband as also Mrs. Lavina Daswani. The demand included diamond neckless for Vijeta Daswani/Gajra. There was reference to subsequent behaviour of troubling the complainant on account of the dowry demands. The First Information Report also made some allegations regarding the relations of her husband Rohit Sujanani with Mrs. Lavina Daswani and Vijeta Daswani/Gajra, the present appellant. It was then contended that in December, 2003, when

the complainant had gone to Sierra Leone, Vijeta Dasawani/Gajra took away her diamond encrusted heavy gold pendant and chain and earring set on the pretext that she wanted to wear them once and she would keep them at a safe place in her father's house. The complainant also stated that she did not return these ornaments. Further, it was stated that in May, 2004, Mr. Rohit Sujanani and Mrs. Lavina Daswani insisted that the complainant should keep her jewellery in London and claimed that she was slapped by her husband on her refusal. It was further claimed that in November, 2004, the present appellant, Vijeta Gajra got married during which the complainant had to beg

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for her ornaments for attending the marriage. There was a reference in the FIR to the misbehaviour on the part of Mrs. Lavina Daswani towards her and again the name of the present appellant figured therein. At this time, the complainant claimed that she was pregnant for the first time and yet she was given physical and mental ill treatment because of which she had a miscarriage. There is a reference to the sexual behaviour of her husband with reference to a pornographic website. It was claimed that the complainant delivered a baby on 08.03.2007. Then there is reference to the appellant visiting and staying with the complainant's parents for three days and the allegation that her husband was having sexual relations with Vijeta Gajra, the appellant herein and Mrs. Lavina Daswani. There was a reference that during her stay the appellant was wearing the diamond encrusted pendant and gold chain and earring set which she had taken (practically stolen) in Sierra Leone.

4. In the last part of this lengthy FIR, there was a reference to the demand of two crores of rupees having been made by Vijeta and her mother over the phone to the complainant as a cost of peace and marital happiness. There was a reference to a telephonic conversation with Mrs. Lavina Daswani in this regard. There was a further reference to an ugly scene on account of arguments. However, there was also a reference to the presence of the brother of the complainant on account of which further ugly scenes were avoided. It was complained that, thereafter, the complainant and her

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parents tried to contact Rohit Sujanani and the Daswanis who were avoiding them and not returning jewellery which was with Vijeta Gajra, Lavina

Daswani and Rohit Sujanani.

5. This complaint dated 15.04.2008 seems to have been registered as an FIR. It seems that on the basis of this FIR, the appellant was sent a summons under Section 160, Cr. P.C. and she moved the Court of Additional Sessions Judge, New Delhi under Section 438 Cr.P.C. for grant of anticipatory bail. In that application, she had made a reference to the summons asking her to appear on 05.06.2008. It was claimed in the application that the complainant's husband Rohit Sujanani was an employee of appellant's father who has business in Sierra Leone and that he was employed on contract basis for the period of three years in 1994. It was claimed in that application that the appellant had met the complainant last in 2007. It was also stated that the allegations made in the FIR were concocted, false and baseless and she had no connection whatsoever with the family of the complainant or her parents. She complained that her own marriage was being tried to be destroyed by wild allegations. There was a reference made in this application by the appellant for quashing the summons arising out of the complaint dated 15.04.2008 and also to a Criminal Miscellaneous Petition No. 2153 of 2008. The High Court had passed the order disposing it of since the State's Counsel had agreed to provide copy of the complaint and had further stated that in the event the FIR

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was registered, the applicant would be informed of this fact and no coercive action would be taken against her till then. In her application there was a statement that she did not even belong to the family of the complainant, her husband or any of their relatives and that all the allegations were palpably false. It was then stated that the writ petition was filed which came to be disposed of by the High Court. It seems that the complainant sought the direction to implead herself in the writ petition-cum-Section 482 Cr.P.C application filed by the appellant.

6. Following are the prayers in the said writ petition under Article 226 of the Constitution of India read with Section 482, Cr.P.C.:

"a) Quash the FIR NO. 138/2008 dated 07.08.2008 under Sections 498A/406, IPC at Police Station Chitranjan Park registered against the petitioner;

b) Direct the police not to take any coercive action against the petitioner in respect of the above said complaint:

c) Pass such other and further orders which may be deemed fit and

proper in the facts and circumstances of the case."

It is on this backdrop that we have to see as to whether it would be expedient to continue the criminal prosecution against the appellant.

7. Shri U.U. Lalit, Learned Senior Counsel, appearing on behalf of the appellant argued that in *U. Suvetha v. State By Inspector of Police & Anr.* [(2009) 6 SCC 757], it was specifically held that in order to be covered under Section 498A, IPC one has to be a 'relative' of the husband by blood,

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marriage or adoption. He pointed out that the present appellant was not in any manner a 'relative' as referred to in Section 498A, IPC and, therefore, there is no question of any allegation against her in respect of the ill-treatment of the complainant. The Court in this case examined the ingredients of Section 498A, IPC and noting the specific language of the Section and the Explanation thereof came to the conclusion that the word 'relative' would not include a paramour or concubine or so. Relying on the dictionary meaning of the word 'relative' and further relying on R. Ramanatha Aiyar's *Advance Law Lexicon*, Volume 4, 3rd Edition, the Court went on to hold that Section 498A, IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in *T. Ashok Pai v. CIT* [(2007) 7 SCC 162]. A reference was made to the decision in *Shivcharan Lal Verma & Anr. v.*

State of M.P. [(2007) 15 SCC 369]. After quoting from various decisions of this Court, it was held that reference to the word 'relative' in Section 498A, IPC would be limited only to the blood relations or the relations by marriage.

8. Relying heavily on this, Shri Lalit contended that there is no question of any trial of the appellant for the offence under Section 498A, IPC. The argument is undoubtedly correct, though opposed by the Learned Counsel appearing for the State. We are of the opinion that there will be no question of her prosecution under Section 498A, IPC. Learned Senior Counsel

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appearing on behalf of the complainant, Shri Soli J. Sorabjee, also did not seriously dispute this proposition. Therefore, we hold that the FIR insofar as it concerned Section 498A, IPC, would be of no consequence and the appellant shall not be tried for the offence under Section 498A, IPC.

9. That leaves us with the allegation under Section 406, IPC for the offence of criminal breach of trust as there are allegations in respect of the jewellery. We desist from saying anything at this juncture. We also desist from going into the correctness or otherwise of these allegations as they will have to be proved by evidence. Shri Lalit pointed out that on the face of it the allegations are wild and baseless as the appellant herself comes from a wealthy background and is a married lady having settled down in Indore and is also mother of a child. He pointed that the FIR is calculated to destroy her marital life with the wildest possible allegations and, therefore, we should quash the entire FIR as not being bona fide and actuated by malice.

10. There can be no doubt that the allegations made are extremely wild and disgusting. However, how far those allegations can be used to meet the requirements for the offence under Section 406, IPC is a moot question. For obvious reasons, we will not go into that exercise. Whatever the form in which the allegations under Section 406, IPC are made, the fact of the matter is that there is an FIR and the Court concerned has taken cognizance thereof. Under these circumstances, we would only protect the interest of the appellant by directing that she would not be required to attend the proceedings unless specifically directed by the Court to do so and that too in

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the case of extreme necessity. Similarly, no coercive step shall be taken against her. She shall be granted bail by the Court trying the case if it decides to try the offence by framing the charge. We expect the Court to be careful while considering the framing of charge.

11. We, therefore, hold that the appellant shall not be tried for offence under Section 498A, IPC. However, we desist from quashing the FIR altogether in view of the allegations made under Section 406, IPC with the protection that we have granted to the appellant. With these observations, the appeals are disposed of.

.....J.
[V.S. Sirpurkar]

.....J.
[Cyriac Joseph]

ITEM NO. 1-A

Court No.8

SECTION II

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).6091-6093/2009

VIJETA GAJRA

Petitioner(s)

VERSUS

STATE OF NCT OF DELHI

Respondent(s)

Date: 08/07/2010 These Petitions were called on for judgment today.

For Petitioner(s)

M/s. Khaitan & Co.

For Respondent(s)

Ms. Sadhna Sandhu, Adv. for
Mrs Anil Katiyar ,Adv

Mr. Chander Shekhar Ashri, Adv.

Hon'ble Mr. Justice V.S. Sirpurkar pronounced the
 judgment of the Bench comprising His Lordship and Hon'ble Mr.
 Justice Cyriac Joseph.

Leave granted.

The appeals stands disposed of in terms of signed
 judgment.

(Pardeep Kumar)

(Shashi Bala Vij)

Court Master

Court Master

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]