

SUPREME COURT OF INDIA

National Commission for Women

Vs.

Bhaskar Lal Sharma & Ors.

Crl.A.No.1325-1326 of 2009

(Altamas KabirCJ, P. Sathasivam and G.S. SinghviJJ.)

14.03.2013

ORDER

Altamas Kabir,CJ.

1. Curative Petition (Crl.) Nos.24-25 of 2010, has been filed by the National Commission for Women in Review Petition (Crl.) Nos.384-385 of 2009 in Criminal Appeal Nos.1325-1326 of 2009, which were disposed of by this Court on 27th July, 2009. By the said judgment and order, this Court set aside the summoning order, which had been passed on 21st March, 2005, against the appellants by the learned Metropolitan Magistrate, Patiala House, New Delhi.

2. The respondent No.3 in the curative petition, Monica, was married to one Vikas Sharma, son of the respondent Nos.1 and 2 in the curative petition. On account of differences, the respondent No.3 filed a complaint against the said respondents before the aforesaid Magistrate on 9th September, 2004, being No.287/1A under Sections 498A, 406 and 34 of the Indian Penal Code. Summons issued on such complaint was challenged by the said respondent Nos.1 and 2 before the Delhi High Court under Section 482 of the Code of Criminal Procedure, being Criminal Misc. (Main) No.4742 of 2005, for quashing the summoning order dated 21st March, 2005. The said revision, having been dismissed, the respondent Nos.1 and 2 in the curative petitions, came before this Court by way of Criminal Appeal Nos.1325-1326 of 2009. The said appeals were disposed of by two Hon'ble Judges of this Court upon holding that no case under Sections 498A or 406 I.P.C. had been made out against the respondent No.1, Bhaskar Lal Sharma, and, as far as the respondent No.2, Vimla Sharma, is concerned, she could be proceeded with only under Section 406 I.P.C.

3. Aggrieved by the said judgment and order, the respondent No.3, Monica, filed the review petitions, which were dismissed and it is against such dismissal that the present Curative Petition (Crl.) Nos.24-25 of 2010, have been filed by the National Commission for Women.

4. Appearing in support of the petitions, Ms. Indu Malhotra, learned senior counsel, pointed out several paragraphs from the judgment itself, which in her submission, amounted to cruelty within the definition of Section 498A I.P.C. Ms. Malhotra, submitted that the same was sufficient for issuance of summons under Section 498A as has been done by the learned Metropolitan Magistrate.

5. It was also submitted by her that the manner in which the appeals had been heard and disposed of, quashing the summoning order at the very initial stage, was also improper, since the trial was yet to be conducted and evidence was yet to be adduced in the matter.

6. Ms. Malhotra's submissions were supported by the learned Solicitor General, Mr. Mohan Parasaran, who was of the view that the matter required reconsideration.

7. As far as the respondent No.3, Monica, is concerned although, she had applied to appear in-person, the Registrar concerned has found that though she was in full possession of all the facts, she was not emotionally in a position to represent her case in the matter and, accordingly, suggested an Amicus Curiae to represent her.

8. At this juncture, we may also indicate that a separate curative petition has been filed by Monica, being Curative Petition No.D 10575 of 2010, in which we have not till date issued any notice.

9. Opposing the prayers made in the curative petitions, Mr. Uday U. Lalit, learned senior counsel appearing for the respondent No.2 only, firstly questioned the locus standi of the National Commission for Women, to appear and maintain a curative petition in the matter, having particular regard to the decision of this Court in National Commission for Women v. State of Delhi and Another (2010) 12 SCC 599, in which this Court was of the view that an appeal at the instance of the National Commission for Women was not maintainable, since such a right was a statutory right and the National Commission for Women, was not even a party in the proceedings.

10. Mr. Lalit also urged that in any event, from the fact disclosed in the judgment under consideration, there is nothing which makes out a case as such under Section 498A I.P.C. and even the finding regarding the making out of an offence under Section 406 I.P.C., was not warranted.

11. We have considered the submissions made on behalf of the respective parties and we are of the view that as far as the objection relating to the locus standi of the applicant, taken by Mr. Uday U. Lalit is concerned, the same is not tenable on account of the fact that we are not dealing in this matter with a statutory right but a constitutional provision i.e. Article 142 of the Constitution. The said Article empowers the Supreme Court to pass appropriate orders to do justice between the parties. Furthermore, the issue involved is not one against Monica alone, but the interpretation of the expression "cruelty" used in

Section 498A I.P.C. We are, therefore, not inclined to accept Mr. Lalit's submission on the point of locus standi and we hold that these curative petitions are maintainable by the National Commission for Women, which has been constituted with certain definite objects in mind. In this regard, we may refer to Section 10 of the National Commission for Women Act, 1990, which provides for the functions of the Commission and, in particular, Section 10(1)(e) and (f) thereof. Clause (e) of sub-section (1) indicates that the Commission would be entitled to take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities and clause (f) provides that the Commission will look into complaints and take suo moto notice of matters relating to deprivation of women's rights, non-implementation of laws enacted to provide protection of women and also to achieve the objectives of equality and development.

12. As far as the question regarding making out of a case under Section 498A I.P.C. is concerned, it has to be kept in mind that the appeals were against the initial order summoning the accused to stand trial. Accordingly, it was too early a stage, in our view, to take a stand as to whether any of the allegations had been established or not.

13. Accordingly, we allow the curative petitions filed by the National Commission for Women and recall the judgment and order delivered by this Court on 27th July, 2009, in Criminal Appeal Nos.1325-1326 of 2009, as also the judgment and order dated 1st September, 2009, in Review Petition (Crl.) Nos.384-385 of 2009 and restore the appeals for de novo hearing. Inasmuch as, the fact and law situation raised in these curative petitions is the same as that of the one filed by Monica, being Curative Petition (Crl.) No.D 10575 of 2010, we issue notice thereupon, make it immediately returnable and since the same parties are involved, allow the same as well.

14. The question of the locus standi of the National Commission for Women of being heard in the criminal appeals, may be taken up for consideration by the appropriate Bench taking up the matter for de novo hearing.

15. We also make it very clear that the observations made in this order is for the purposes of the hearing of the curative petitions alone and should not, in any way, prejudice the outcome of the appeals, when they are heard afresh.

