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NEELU CHOPRA AND ANR.

v.

BHARTI

(Criminal Appeal No. 949 of 2003)

OCTOBER 7, 2009

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[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

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Code of Criminal Procedure, 1973: s.482 – Complaint filed against husband and in-laws under ss.406, 498A read with s.114 IPC – Cognizance of offence – Petition for quashing order of cognizance – Husband expired in 2006 – Petition for quashing dismissed – Appeal by parents-in-law – Held: Complaint was vague and general and silent about the precise acts of the appellants – Particulars of offence committed by appellants and role played by them in committing that offence not mentioned in the complaint – Allegations primarily made against husband who has already expired – Under such circumstances, allowing prosecution to continue against the aged parents would be abuse of process of law – Penal Code, 1860 – ss.406, 498A read with s.114.

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Respondent filed complaint against her husband, parents-in-law and sister-in-law under s.406, s.498A read with s.114 IPC. Magistrate took cognizance of the offence. The order of cognizance was challenged by the accused persons. Accused-husband expired in 2006. However, High Court did not quash the complaint holding that the complaint showed the material sufficient to proceed against the accused persons. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. From a bare reading of the complaint, it is apparent that the problem started barely after six months of the marriage. The complaint stated that all the accused

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persons came to complainant's parents house and asked her parents to give the complainant more gold and other articles as dowry otherwise they would leave the complainant there and her husband would be married second time. The allegation against accused husband in the complaint was that the accused husband asked the complainant to hand over the ornaments and clothes to his parents lest they are lost in the way. On reaching Delhi when the ornament were asked back by the complainant, they were not returned back. The perusal of complaint as a whole, showed that it was basically against the accused husband. All the allegations were against husband. There was undoubtedly some reference to the parents-in-law-appellants, but there were no particulars given as to date on which the ornaments were handed over, as to the exact number of ornaments or their description and as to the date when the ornaments were asked back and were refused. Even the weight of the ornaments was not mentioned in the complaint. Even in complaint where the complainant stated that she asked for her clothes and ornaments which were given to the accused and they refused to give these back, the date was significantly absent. Even about the clothes, the date on which they were handed over to daughter of the appellants and the other details were very significantly absent. It was also the version of the complainant that she was beaten in support of which she filed a certificate from AIIMS hospital. However, in the complaint, it is not seen as to on which date she was beaten and by whom. The matter against sister-in-law, the fourth original accused was already dropped as she was in fact not even the resident of the same house. [Para 4] [1078-C-H; 1079-A-C]

2. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not end of the matter. What is required to be brought to the

A notice of the court is particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. The complaint is sadly vague. It did not show as to which accused committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against accused-husband, as the allegations were made against him more precisely but he is no more and has expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents, on the basis of vague and general complaint which is silent about the precise acts of the appellants. The High Court merely mentioned that the allegation in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. If the articles were in the possession of the husband, there was no question of the appellants being in possession. Insofar as the offence under Section 498A IPC was concerned, there is no material or allegation worth the name against the appellants. This is apart from the fact that despite service of notice, the complainant neither appeared before this court nor engaged any counsel to represent her. Under the circumstances, the judgment of the High Court is set aside. [Paras 5, 6 and 7] [1079-D-H; 1080-A-D]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 949 of 2003.

G From the Judgment & Order dated 6.9.2002 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. 7630-M of 1994.

M.N. Krishnamani, Rachna Gupta for the Appellants.

The Judgment of the Court was delivered by

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V.S. SIRPURKAR, J. 1. This appeal is against the judgment of the Punjab and Haryana High Court whereby the petition for quashing the criminal proceedings against the appellants pending before the trial court has been dismissed.

2. The factual scenario is that the appellant Neelu Chopra and Krishan Sarup Chopra are husband and wife and the respondent Bharti is their daughter-in-law. Bharti was married in the year 1984 to one Rajesh, the son of present appellants. However, as per the version of the respondent the married life was not smooth on account of unreasonable demand of dowry and the misbehaviour on the part of husband Rajesh and his parents, the appellants herein. Ultimately, on 24.12.1993 a complaint came to be filed before the Judicial Magistrate 1st Class, Gidderbaha. The complaint was accepted in the sense that the learned Judicial Magistrate by his order dated 25.1.1994 took the cognizance of the offences under Sections 406, 498A read with 114 IPC. This order of cognizance was challenged by the accused persons. Rajesh is reported to have expired on 6.1.2006. The High Court, however, did not agree to quash the complaint and took a view that the complaint did show the material sufficient to proceed against the appellants. The High court, however, expressed that it would be open to the Magistrate to exempt the personal presence of the appellants. 3.

3. Mr. M.N. Krishnamani, learned senior counsel appearing for the appellants painstakingly took us through the original complaint as also the allied facts relevant for the determination of the present controversy. It was pointed out by the learned senior counsel that the marriage had taken place way back in the year 1984 while the complaint was filed on 24.12.1993 i.e. after about nine years of the marriage. It was further pointed out that two daughters were born to the complainant and presently the complainant along with his daughter is residing in the same house but on the different floor. Learned senior counsel points out that those daughters are now

- A 22 and 19 years of age. He further points out that presently the age of the first appellant is 76 years while her husband is of 80 years. Learned senior counsel, however, besides these facts, laid great stress on the fact that the complaint is absolutely vague and silent as regards the allegation against the present appellants.

4. We have seen the complaint very carefully. From a bare reading of the complaint it is apparent that the problem started barely after six months of the marriage. In paragraph 3 of the complaint, it is stated that all the accused came to complainant's parents house at Gidderbaha and asked her parents to give the complainant more gold and other articles as dowry otherwise they would leave the complainant there and Rajesh would be married second time. In paragraph 4, the complaint is against Rajesh in the sense that the accused Rajesh asked the complainant to hand over the ornaments and clothes to his parents lest they are lost in the way. On reaching to Delhi when the ornament were asked back by the complainant, they were not returned back. When we see the complaint as a whole it is basically against the accused Rajesh. All the allegations are against Rajesh. There is undoubtedly some reference to the present appellants, but what strikes us is that there are no particulars given as to date on which the ornaments were handed over, as to the exact number of ornaments or their description and as to the date when the ornaments were asked back and were refused. Even the weight of the ornaments is not mentioned in the complaint and it is a general and vague complaint that the ornaments were sometime given in the custody of the appellants and they were not returned. What strikes us more is that even in paragraph 10 of the complaint where the complainant says that she asked for her clothes and ornaments which were given to the accused and they refused to give these back, the date is significantly absent. It seems from the order taking cognizance that the learned Magistrate has mentioned about the version of the complainant is supported by Bhagwati and Dharampal to the

fact that the ornaments were entrusted to Krishan Saroop and Rajesh while clothes were entrusted to Rakhi and they refused to hand over the same. Even their statements could not be better than the vague complaint. Even about the clothes, the date on which they were handed over to Rakhee who happens to be the daughter of the present appellants and the other details are very significantly absent. It was also the version of the complainant that she was beaten in support of which she has filed a certificate from AIIMS hospital, New Delhi. However, in the complaint, it is not seen as to on which date she was beaten and by whom. It is significant to note that the matter against the Rakhee, the 4th original accused has already been dropped as she was in fact not even the resident of the same house.

5. In order to lodge a proper compliant, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.

6. The High Court has merely mentioned that the allegation in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the jewellery. This

- A is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them. Insofar as the
- B offence under Section 498A IPC is concerned, we do not find any material or allegation worth the name against the present appellants. All the allegations appear to be against the Rajesh.

- C 7. This is apart from the fact that despite service of notice, the complainant neither appeared before this court nor engaged any counsel to represent her. Under the circumstances we are of the opinion that the judgment of the High Court deserves to be set aside. It is, accordingly, set aside and the order of the learned Magistrate taking cognizance is quashed. The complaint is quashed under Section 482 Cr.P.C.

- D 8. The appeal is allowed accordingly.

D.G.

Appeal allowed.