

REPORTABLE**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 416 OF 2020****[ARISING OUT OF SPECIAL LEAVE PETITION [CRL] NO.2908 OF 2019]****KAMLESH KALRA****.....APPELLANT(S)****VERSUS****SHILPIKA KALRA & ORS.****.....RESPONDENT(S)****WITH****CRIMINAL APPEAL NO. 415 OF 2020****[ARISING OUT OF SPECIAL LEAVE PETITION [CRL] NO. 2371 OF 2020]****[DIARY NO. 9972 OF 2019]****SHILPIKA KALRA****.....APPELLANT(S)****VERSUS****MANISH KALRA & ORS.****.....RESPONDENT(S)****J U D G M E N T****Vineet Saran, J.**

Delay condoned.

2. Leave granted.

3. Brief facts of this case, relevant for the purpose of the present appeals, are that the complainant (Shilpika Kalra) and her husband (Manish Kalra) got married on 28.07.2007. The marriage took place in Delhi, but thereafter, they were living together in Mumbai, where both were working. Admittedly, the two of them started living separately since 10.06.2009. Thereafter, on 24.07.2009, the husband-Manish Kalra filed a divorce petition before the Family Court, Bandra, Mumbai. The said divorce petition is still pending.

4. Then, after a gap of nearly three and a half years, on 28.01.2013, the wife-Shilpika Kalra filed a complaint in Delhi seeking registration of First Information Report (for short 'FIR') against Manish Kalra (husband), Kamlesh Kalra (mother-in-law), Avnish Kalra (brother-in-law) and Suman Kalra (sister-in-law), along with a list of stridhan articles, alleging that the said articles were in possession of all the accused. Then, on 29.10.2014, the police registered an FIR under Sections 406 and

498A of the Indian Penal Code, 1860 (for short 'IPC') against all the accused as mentioned above. The said FIR reads as follows:

"I Shilpika Kalra, on my complaint appeared in CAW Cell on 15.9.2014 at 11.30 a.m. My in-laws have not appeared in spite of being informed. I was married to Manish Kalra under Hindu Rights was arranged & on 28.7.2007 in Delhi Cantt. On the wedding my family & widow mother of Late Brig S H Grover gave case & gifts as per their standard & standard of my in-laws. After marriage I resided in J-1902 CR Park where my mother-in-law demanded my salary & mentioned. She received all white goods for her marriage from her brother when she got married. My mother should set up my house. They also insulted me that their elder son was married Taj Hotels & my mother did not do the needful. All expensive Omega Watches, designer gifts & cash gifted were not appreciated. After the marriage I took a transfer from DNA Newspaper Delhi & relocated to Mumbai to join my husband. He deserted me on June 10, 2009 & filed a frivolous petition for divorce. My Stridhan is with my mother-in-law Kamlesh Kalra, Avnish Kalra, Suman Kalra. My mother-in-law resides & is in the possession of my Stridhan. Mrs. Kamlesh Kalra (all responsible to influence my husband). Kindly also ask Mrs. Kamlesh Kalra to return my Stridhan. She is instrumental in

influencing my husband to file a divorce petition. Next date 19.0.2014 at 11.00 A.M. Sd/- Shilpika Kalra, J-1902, C.R. Park, New Delhi. 9920389955.”

5. Then, on 16.06.2015, husband-Manish Kalra deposited the Stridhan articles, along with a Pay Order of Rs.5,98,000/-, with the Investigation Officer, because the complainant/wife-Shilpika Kalra refused to accept the same on the ground that the list submitted was incomplete, and that all the Stridhan articles were not deposited.

6. On 25.05.2016, a charge-sheet was filed by the police against the husband-Manish Kalra, and mother-in-law Kamlesh Kalra, and not against the brother-in-law and sister-in-law (Avnish Kalra and Suman Kalra, respectively), who were residents of Singapore from 2008-2014 and thereafter of Hong Kong since 2014. In the said charge-sheet, it was clearly mentioned that *“complainant has not provided the list of remaining Stridhan till now.”*

Then, on 09.01.2017, it was recorded by the police that the complainant/wife-Shilpika Kalra visited the police station on 24.08.2016 and submitted a letter, with the additional list of her

Stridhan articles which were not returned to her. The same list of Stridhan articles was again filed with the police on 05.12.2016, with a request to recover the remaining articles. This additional list was given after more than seven years of the divorce petition having been filed, and more than a year after the husband-Manish Kalra had deposited the Stridhan articles, along with a Pay Order of Rs.5,98,000/-, with the Investigation Officer.

7. Then, on 22.02.2018, the Court framed charges under Section 406/34 IPC against the husband-Manish Kalra and mother-in-law Kamlesh Kalra. The husband-Manish Kalra was also charged under Section 498A IPC as well.

8. It may be noted that after the charge-sheet was submitted by the police on 25.05.2016, and even before the charges were framed by the Court, Manish Kalra, Kamlesh Kalra, Avnish Kalra and Suman Kalra filed Writ Petition (Crl.) no.431 of 2016, seeking quashing of the FIR no.390 of 2014 under Sections 498A/406 IPC, filed by complainant-Shilpika Kalra.

9. The High Court, vide its judgment and order dated 12.10.2018, held that since no charge-sheet was filed against the

brother-in-law and sister-in-law (Avnish Kalra and Suman Kalra, respectively), the petition seeking quashing of FIR on their behalf was rendered infructuous. Further, the High Court allowed the said Writ Petition to the extent that the Writ Petitioners - Manish Kalra and Kamlesh Kalra were not liable to be proceeded under Section 498A IPC, as the FIR was filed beyond the period of limitation of three years. However, with regard to the offence under Section 406 IPC, it was observed that the same was a continuing offence and every day of non-return of Stridhan articles would give fresh cause of action, and thus it was held that the same would not be liable to be quashed on the ground of limitation. However, since the entrustment of the Stridhan articles was alleged only against mother-in-law Kamlesh Kalra and not the husband-Manish Kalra, the FIR under Section 406 IPC was quashed with regard to Manish Kalra alone, and not against the mother-in-law Kamlesh Kalra.

10. Aggrieved by the said judgment of the High Court, Kamlesh Kalra filed this appeal by way of this Special Leave Petition (Crl.) no. 2908 of 2019 against the complainant/wife-Shilpika Kalra (respondent no.1); State (NCT) Delhi (respondent

no.2); husband-Manish Kalra (proforma respondent no.3); brother-in-law Avnish Kalra (proforma respondent no.4); and sister-in-law Suman Kalra (proforma respondent no.5).

The complainant Shilpika Kalra also filed Special Leave Petition (Crl.) Diary No.9972 of 2019 against Manish Kalra, Kamlesh Kalra, Avnish Kalra, Suman Kalra and State (NCT) Delhi.

11. Both these Appeals (arising out of aforementioned Special Leave Petitions) have been heard together. We have heard learned Counsel for the parties at length and have perused the material on record.

12. After considering the decisions of this Court rendered in **Vanka Radhamanohari vs Vanka Venkata Reddy** (1993) 3 SCC 4 and **Arun Vyas vs Anita Vyas** (1999) 4 SCC 690, and the decisions of the High Court of Delhi in **Asha Ahuja vs Rajesh Ahuja** 2003 (68) DRJ 437 and **S. K. Bhalla vs State of NCT of Delhi** 2010 SCC OnLine Del 4384, the High Court held as under:

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11. As noted above, the allegations of the complainant are of harassment by

the petitioners No.1 and 2 i.e. the husband and the mother-in-law. Admittedly the respondent No.2 and petitioner No.1 are living separately since June 10, 2009 and there is no material to show that due to reconciliatory measures or for what reason the respondent No.2 failed to file the complaint on which the afore-noted FIR was registered till 28th January, 2013, i.e. beyond the period of limitation of three years. Thus there being no justification for the delay in filing the complaint beyond the period of limitation and there being no allegation that the physical and mental harassment continued against respondent No.2 beyond June 10, 2009, petitioners No.1 and 2 are not liable to be proceeded under Section 498-A IPC. However, as noted above, Section 406 IPC is a continuing offence and every day of non-return of the istridhan articles would give fresh cause of action. Admittedly, after the registration of the FIR petitioner No.1 sought to return certain istridhan articles thereby fortifying the claim of breach of trust. However, one of the necessary ingredients for offence punishable under Section 406 IPC is entrustment and the complainant alleges entrustment of istridhan articles to petitioner No.2 and not petitioner No.1.

12. Thus, this Court finds no ground to quash the FIR in question against petitioner No.2 for offence punishable

under Section 406 IPC or the proceedings thereto.”

13. As regards, the finding recorded by the High Court in respect of complaint/FIR filed under Section 498A IPC, we are of the firm opinion that the same does not call for interference. In the facts of this case, it is clear that the FIR filed in this regard in 2015 was time barred, having been filed much more than three years after the separation of Manish Kalra (husband) and Shilpika Kalra (wife) and the filing of the divorce petition by the husband, both in 2009. In the facts of the case, the reasons given by the High Court for quashing the proceedings under section 498A IPC are justified and do not call for interference by this Court.

14. Admittedly, after the marriage on 28.07.2007, the wife-Shilpika Kalra and husband-Manish Kalra were living separately since 10.06.2009. On 24.07.2009, the husband-Manish Kalra had filed divorce petition in Mumbai. Even though, the divorce petition has been pending for over a decade, no allegation in the said proceedings, till date, has been made by wife-Shilpika Kalra claiming any Stridhan. It is also not disputed that all the

Stridhan articles, as per the list initially furnished by the wife-Shilpika Kalra on 28.01.2013, along with a Pay Order of Rs.5,98,000/-, was tendered to the wife-Shilpika Kalra and when she did not accept the same, the Stridhan articles, as well as the Pay Order, were deposited with the Investigation Officer on 16.06.2015, and the same are still with the police. In the FIR, it is not even alleged that the complainant/wife-Shilpika Kalra ever demanded the Stridhan articles from her mother-in-law Kamlesh Kalra or her husband-Manish Kalra; or that there was refusal by the said parties to return the Stridhan.

Keeping in view that the husband-Manish Kalra has already deposited the Stridhan articles, as given in the list by wife-Shilpika Kalra on 28.01.2013, it cannot be said that the mother-in-law Kamlesh Kalra or the husband-Manish Kalra ever wanted to keep the Stridhan articles, as well as the money, with them. The subsequent list submitted by the complainant in 2016, of which reference has been made in the police report dated 09.01.2017, clearly appears to be an afterthought, as the same was filed after more than seven years of the filing of the divorce

petition, and more than three years after the initial list was filed along with the complaint on 28.01.2013.

15. The submission of the learned Counsel of the complainant, in this regard, is that the additional list furnished later was of the items gifted by the family and friends of the appellant, and some household items. In the facts of this case, in our view, the same is not worthy of acceptance.

16. In view of the aforesaid facts, we are of the opinion that the allegations of the complainant- Shilpika Kalra with regard to non-return of the Stridhan articles and the charges under Section 406 against the Kamlesh Kalra (or even against Manish Kalra, Avnish Kalra and Suman Kalra) are not sustainable in law. It clearly appears that the filing of the criminal complaint is a pressure tactic, having been employed by the complainant- Shilpika Kalra against her husband, mother-in-law, brother-in-law and sister-in-law, which is clearly an abuse of the process of Court, and is liable to be quashed in toto.

17. As such, we allow the Appeal arising out of Special Leave Petition (Crl.) No.2908 of 2019 filed by Kamlesh Kalra and quash the FIR no. 390 of 2014 under Sections 498A/406 IPC; and

dismiss the Appeal arising out of Special Leave Petition (Crl.).....
(Diary No.9972 of 2019) filed by Shilpika Kalra.

.....J
(UDAY UMESH LALIT)

.....J
(VINEET SARAN)

New Delhi;
April 24, 2020.