

Shakuntala Vs The State of Delhi

Court: Delhi High Court

Date of Decision: Feb. 26, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161
Penal Code, 1860 (IPC) â€” Section 409, 498A

Citation: (2007) 139 DLT 178 : (2007) 1 DMC 793 : (2007) 1 ILR Delhi 1005

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: R.P. Yadav and O.P. Panwar, for the Appellant; Richa Kapoor, for the Respondent

Final Decision: Allowed

Judgement

Shiv Narayan Dhingra, J.

By this petition, the petitioner has challenged the validity of the order dated 22nd July, 2006 passed by the

learned Additional Sessions Judge whereby the learned Additional Sessions Judge observed that the allegations prima facie do show that the

petitioner did have some role or the other in the entrustment and criminal breach of trust with regard to the istridhan of the complainant. However,

the learned Sessions Judge went on to observe that the complaint of the complainant dated 9th November, 2001 and supplementary statement of

the complainant to some extent raise much doubt to the entire prosecution story. She also observed that the complaint in substance made

allegations only against her husband for having re-married during subsistence of first marriage with the complainant. The complainant in her

supplementary statement, made after the registration of FIR stated that her husband had deposited part of the istridhan before CAW Cell and the

remaining istridhan was still lying with her husband. Even her next supplementary statement reiterates the same that her remaining istridhan was still

lying with her husband. The learned Additional Sessions Judge however, observed that since the complainant had made allegations in the complaint

that she along with her minor son escaped from the matrimonial home on 8.8.2001 in three wearing clothes and all her istridhan and dowry articles

were lying with her husband and her in-laws, and her husband and in-laws refused to return her istridhan and dowry articles despite her request, a

prima facie case was made out and it would not be proper to throttle the prosecution at its threshold without giving an opportunity to the

complainant to prove her allegations.

2. Complainant Smt. Radha had married Nagender Singh, son of the petitioner on 29th April, 1998. From the perusal of the statement of

complainant and her complaints, it is apparent that the couple was not doing fine since her husband started having an affair with some woman, who

worked in his office. Due to this reason, he filed a divorce petition against Smt. Radha in the year 1999 itself being HMA No. 962/99, which was

assigned to the Court of Shri S.P.Garg, ADJ. This petition was contested by the complainant and ultimately this petition was withdrawn by Shri

Nagender Singh on 24.10.2000, under an arrangement. It was decided that Nagender Singh and complainant Smt. Radha shall live separate from

her in-laws in a rented accommodation; Nagender Singh took a room on rent at T-510/CT-76 Baljeet Nagar, New Delhi on 29th October, 2000

and the couple started living there. The complainant shifted to that house along with all her articles etc. Nagender Singh, however, changed his

name to Naveen and married the woman called Manjusha Rani with whom he was having an affair and he started spending less time in the house

where the complainant was living. When the complainant learnt about the second marriage of her husband she left the house where she was living

with Nagender Singh, in September, 2001 and went to her parents' house. In November, 2001 the complainant, her father and father of the boy,

jointly made an application to Police Station, Punjabi Bagh giving the facts about the marriage of the complainant and withdrawal of divorce

petition, then separate living of the complainant with Nagender Singh and his second marriage with Manjusha. All the three made joint request to

police that a raid should be conducted at the house of Manjusha and Navin @ Nagender Singh and action should be taken. However, she

thereafter filed a complaint before CAW Cell as well, against her husband wherein also her grievance was against her husband, who had

conducted second marriage. She made allegations that her husband was not returning her istridhan and dowry articles. Although under the

directions of CAW Cell her husband had returned some goods but the complainant averred that these were not complete goods and more

istridhan and dowry articles were lying with her husband. She got an FIR No. 187/2002 registered at P.S. Sarai Rohilla on 21st May, 2002. In

this FIR she made allegations against her father in law, mother-in-law, sister in law and her sister-in-law" husband(brother in law) viz. Pratap Singh,

Shakuntala, Bimla and Surender Singh respectively, apart from making allegations against her husband and Manjusha Rani. She stated that her

jewellery and istridhan were taken by her mother-in-law Shakuntala on 8th October, 1999 on the pretext that she wanted to keep them in safe

custody. She also made allegations of cruelty, dowry demand etc. The Court after considering the statement of the complainant and other evidence

collected by police discharged Pratap Singh, Bimla and Surender. However, Court of MM considered that charge u/s 406 was made out against

Shakuntala. Against this order a revision was preferred before ASJ and the order of ASJ has been challenged by this petition.

3. The basic reason for upholding the order of MM by ASJ was that the documents relied upon by the petitioner were not the part of the charge-

sheet filed by police. The documents relied upon by the petitioners are those documents which were on the case dowry of the investigating officer,

but the investigating officer did not make them part of the challan. These documents included the earlier complaint made by the complainant, her

father and father-in-law to the police, supplementary statements of the complainant recorded after filing of FIR regarding return of istridhan.

4. It is settled law that fair and just investigation is a hallmark of any investigation. It is not the duty of the Investigating Officer to strengthen the

case of prosecution by withholding the evidence collected by him. If an Investigating Officer withholds the evidence collected by him, the accused

has a right to rely upon that evidence and tell the Court to take that evidence into account while framing the charges. The Court while framing

charges may not take into account the defense of the accused or the documents in custody of the accused which were not produced by the

accused before the Investigating Officer or which did not form part of the investigation but the Court is duty bound to consider the evidence

collected by the Investigating Officer during the investigation of the case. If it is brought to the notice of the Court by the accused that some of the

evidence or documents have been withheld by the Investigating Officer or the prosecution deliberately, so that truth does not come out before the

Court, the Court, before framing of charge can order the Investigating Officer to place the entire investigation before it and ask him to produce

case diaries. Fair investigation is the right of the accused and this right can be exercised by the accused at the time of charge and the accused can

insist upon the Court to consider the evidence collected by the Investigating Officer but not made part of the charge-sheet. In this case the

evidence relied upon by the accused is not produced by the accused from his custody but is the evidence collected by the Investigating Officer.

These are the supplementary statements of complainant u/s 161, Cr.P.C. recorded by the I.O. The complaint and the statements clearly show that

the couple had separated from parents of Nagender Singh in October, 2000, after the divorce petition and at that time they had gone to a rented

accommodation along with bag and baggage. Even if, in October, 1999 some entrustment was made by the complainant to the petitioner, that

came to an end in October, 2000 when she separated from her in-laws and took away all her belongings. She made no complaint after October,

2000 till September, 2001 that her mother-in-law or father-in-law had any part of her istridhan with her. All her complaints were against her

husband, who had remarried and made her life miserable. Her father-in-law and mother-in-law were co-operating her for an action against their

son. They had gone to the extent of disowning their son, and issued a public notice to that effect. They made complaint to the police against their

son for the action for his second marriage. However, when the complainant could not see her husband behind bars for conducting second marriage

during the persistence of first marriage with her perhaps she thought that she should use Sections 498A and 406 against the family members to

teach a lesson to everybody. The Court cannot be swayed by the feelings of hatred of the complainant. Even at the time of framing charges the

Court has to consider the entire evidence collected by the I.O. or deliberately left out by the I.O. Criminal trial impinges on the liberty of a person

and must not be taken casually.

5. I consider that the order of the learned Additional Sessions Judge where she observed that the material relied upon the accused and not made

part of charge-sheet of the Trial Court, cannot be considered, is liable to be set aside.

6. I, Therefore, hereby set aside the order of the Metropolitan Magistrate framing charges against the petitioner and the order of Additional

Sessions Judge dated 22.7.2006 dismissing the revision. The petitioner is discharged from the charges framed against her u/s 406 IPC. The

petition is accordingly allowed.