2024:DHC:2524

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 30.01.2024***
Pronounced on: 01.04.2024

\+ **CRL.M.C. 1227/2009**

SANGHMITRA ..... Petitioner
Through: Mr. Divjot Singh Bhatia, Advocate

versus

STATE ..... Respondent
Through: Mr. Naresh Kumar Chahar, APP for the State with SI Saurabh, P.S. Malviya Nagar.
Mr. Gautam Das, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

INDEX TO THE JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*') has been filed by the petitioner assailing the impugned judgment dated 04.10.2008, passed by learned Additional Sessions Judge, Delhi (*'learned Sessions Court'*) in CR No. 87/2008, in the case arising out of FIR No. 1098/2002, registered at Police Station Malviya Nagar, Delhi for offence punishable under Section 498A of the Indian Penal Code, 1860 (*'IPC'*).

FACTUAL BACKGROUND

2. Briefly stated, facts of the present case are that the petitioner herein had filed a complaint under Section 498A of IPC on 03.07.2002 against respondent nos. 2 to 8 with the CAW Cell, which had culminated into an FIR No. 1098/2002 dated 19.12.2002, under Sections 498A/406/34 of IPC, P.S. Malviya Nagar, Delhi. The allegations leveled by the petitioner were that she was married to the respondent no. 2 according to Buddhist rites and ceremonies on 28.02.1998, and the petitioner's parents had arranged the marriage according to the best of their financial abilities and had also given dowry in marriage. The petitioner as well as the respondent no. 2 were working in Delhi Police, as Sub-Inspectors at that time. The petitioner had learnt about the greed of dowry of her in-laws, when soon after marriage, her husband, his parents and sisters had started taunting and teasing her for bringing in insufficient dowry. The accused persons allegedly used to abuse the petitioner and used to ask

her to give them more dowry. It was further alleged in the complaint that a specific demand of Rs. 1.5 lakhs, a car, and a separate house was raised by the husband of the petitioner and her in-laws. It was alleged that several domestic articles and other items were repeatedly demanded by the accused persons, and their demands were fulfilled by the petitioner. Further, the failure on the part of the petitioner's father to fulfill the demands of the accused persons had resulted in torture and physical injuries being inflicted upon the petitioner. On 04.09.1999, the respondent no. 2 had allegedly taken out a dagger and threatened the petitioner that he would kill her incase she failed to meet their demands and particularly that of his sister. Since the petitioner was unable to fulfill the demands of her husband and in-laws, she was allegedly beaten and thrown out of her matrimonial home on 08.09.1999. On the same day, she had lodged a complaint mentioning the incidents of cruelty at P.S. Prasad Nagar, Delhi. However, the cruelty against the petitioner continued even thereafter, as alleged. On 06.12.1999, while the petitioner was returning from duty, the respondent no. 2, who was on the same shift, had allegedly severely beaten the petitioner and had threatened her to withdraw the earlier complaint. The petitioner on the same date had filed a complaint at P.S. Palam Airport, vide DD No.35, dated 06.12.1999. It is further the case of the petitioner that she was not allowed to take any of her dowry articles from her matrimonial home and her belongings were also not returned to her. In April, 2000, the petitioner had given birth to a daughter and she was in dire need of her belongings, however, the respondents did not return any of her

belongings, causing hardship to her. Eventually, the complainant had lodged a complaint with the Deputy Commissioner of Police, CAW Cell, New Delhi through proper channels, as she was working as Sub-Inspector in Delhi Police. This complaint was given on 03.07.2002 and in that complaint, it was mentioned that the petitioner/complainant was married on 28.02.1998 and the earlier allegations were reiterated. On the basis of this complaint, the present FIR was registered on 19.12.2002 under Sections 498A/406 of IPC at P.S. Malviya Nagar, Delhi, as noted earlier.

3. The charge-sheet in the present case was filed on 27.07.2004 under Sections 498A/406/34 of IPC against the accused persons, and on the same day, the learned Magistrate was pleased to take cognizance and issue summons to all the accused persons.

4. The learned Metropolitan Magistrate, New Delhi (*'learned Magistrate'*) had passed the order dated 04.06.2006, whereby she had dropped charges under Section 406 of IPC against the accused persons on the ground that nowhere in the complaint, it had been mentioned that the complainant/petitioner had demanded return of her articles from the accused persons. The accused persons were, however, charged under Section 498A read with Section 34 of IPC.

5. The accused persons, who were aggrieved by the order dated 04.06.2008 *vide* which charges were framed against them under Section 498A/34 of IPC, had preferred a revision petition i.e. CR No. 87/2008 which was listed before the learned Sessions Court. Vide impugned judgment dated 04.10.2008, the learned Sessions Court

had allowed the revision petition filed by the accused persons and had discharged for offence under Sections 498A/34 of IPC.

6. By way of present petition, the petitioner/complainant has assailed the aforesaid judgment passed by the learned Sessions Court.

SUBMISSIONS BEFORE THIS COURT

7. **Learned counsel appearing on behalf of the petitioner** argues that the learned Sessions Court erred in setting aside the order of the learned Magistrate thereby, discharging the respondent nos. 2 to 8 from the present FIR. It is submitted that the learned Sessions Court grossly erred in holding that the learned Magistrate took cognizance of a time barred case as the allegations of cruelty pertained to the year 1999 and the cognizance was taken on 27.04.2004, i.e. after expiry of 3 years of limitation period as prescribed under Section 468 Cr.P.C. In this regard, it is submitted that the last alleged offence was committed on 06.12.1999 whereas, complaints were filed both on 06.12.1999 and 03.07.2002, and therefore, the said complaints are well within the period of limitation. It is further argued that the learned Sessions Court while computing the limitation period under Section 468 of Cr.P.C. erred in taking into consideration the date of cognizance taken by the learned Magistrate, as the date for computing limitation under Section 468 Cr.P.C. In this regard, it is submitted that the Hon'ble Supreme Court of India in *catena* of judgments has held that the relevant date to compute the limitation period under Section 468 of Cr.P.C. is the date of filing of complaint or date of institution of proceedings. It is argued that the

learned Sessions Court did not appreciate that the offence under Section 498A of IPC is a continuing offence, and the same shall continue even if the wife is not residing at her matrimonial home, and the cruelty under Section 498A need not only be physical, but the same also includes mental cruelty including torture or violent behavior.

8. It is further argued that in the complaint, the petitioner had categorically stated that even after she was thrown out of the matrimonial home, the demand for dowry by the accused persons had continued. She had further stated that the cruelty by the respondents had even continued after she had given birth to a girl child on 27.04.2000, and that she was mentally tortured through telephonic calls. Further, the petitioner has also stated that even at the time of filing the said complaint on 04.07.2002, she was still waiting to go back to her matrimonial home and return of her belongings. Therefore, it is stated that the complaint filed by the petitioner was well within the limitation period. It is also submitted that the learned Sessions Court grossly erred in going into the merits of the case at the stage of charge itself, while holding that the possibility of false implication of the accused persons cannot be ruled out solely because the complainant is a police officer. In this regard, it is submitted that the trial in the matter has not commenced yet and simply because the complainant is a police officer, it cannot be assumed that the complaint filed by her is false. Further, it is also stated that even the respondent no.2/husband of the petitioner is a police officer, and therefore, subject FIR would not have been registered unless there

was merit in the allegations of the petitioner. It is also argued that the learned Sessions Court erred in holding that the possibility of false implication by the petitioner cannot be ruled out as she had roped in the five sisters of her husband, father-in-law (now deceased) and mother-in-law. In this regard, it is submitted that the petitioner has made specific allegations against the said respondents and therefore, they could have only been discharged in the absence of any specific allegations in the FIR and not otherwise. On these grounds, it is prayed that the present petition be allowed and the impugned judgment be set aside.

9. **Learned counsel for the respondent no. 2**, on the other hand, argues that the learned Magistrate could not have reviewed the order dated 27.07.2004, as no power was vested in the learned Magistrate to review its own order or to condone the delay in filing the complaint after reviewing its own order. It is stated that the learned Magistrate could have condoned the delay only at the time of taking cognizance of the offence and not afterwards. It is further argued that Section 468 of Cr.P.C. bars the Magistrate to take cognizance of a time barred case, however, the Magistrate can condone the delay under Section 473 of Cr.P.C. only after proper explanation of delay and that too at the time of taking cognizance of offence and not subsequent to that. It is argued that in the present case, the first complaint was lodged by the petitioner on 08.09.1999, P.S. Prasad Nagar, and since then she had been residing separately. The second complaint was filed on 06.12.1999, P.S. Palam Airport, had been withdrawn by the complainant, since the alleged place was

under CCTV surveillance and nothing incriminating was found against the accused by the I.O. and since the complaint was reported after four hours of the incident, and no PCR call was made. The third complaint was lodged on 03.07.2002, registered at CAW Cell, Delhi regarding the incidents of 1999 as she was residing separately since 1999, implicating not only the respondent no. 2 but his entire family members. It is also argued that the complaint did not level specific allegations but there were only general and omnibus allegations. It is also argued that this Court, being the second appellate court, cannot go into the merits of the case based on factual instances. It is also argued that the complainant is working in the Delhi Police and is conversant with law on the subject, she knows investigation procedure and law on subject of cruelty, but has failed to produce any supportive documents such as PCR calls, medical reports, injury records, medicine bills, Doctors' name, X Ray reports, MRI report, payment of bill of Doctors, photographs of injury etc. or any witness to quarrel and beatings etc. to substantiate her allegations. It is, thus, prayed that the present petition be dismissed as it is devoid of any merit.

10. This Court has **heard** arguments addressed by both the parties, and has gone through the case file including the trial court record and the written submissions filed on behalf of both the parties.

THE ISSUE IN QUESTION

11. The short issue that arises for consideration in the present petition, after analyzing the entire factual matrix of the case, is

whether the cognizance which was taken by the learned Magistrate *vide* order dated 27.07.2004 was barred by time in view of Section 468 of Cr.P.C., and whether the learned Sessions Court was correct in discharging the accused persons *vide* impugned judgment dated 04.10.2008.

ANALYSIS & FINDINGS

Cognizance by the Magistrate was Not Barred by Limitation under Section 468 of Cr.P.C.

12. Some undisputed and relevant facts, which arise from the perusal of record are as under:

i. The petitioner had left her matrimonial home on 08.09.1999, when allegedly, she had been beaten and thrown out of the matrimonial home;

ii. The complaint in question was lodged by the petitioner with the CAW Cell on 03.07.2002;

iii. The FIR in question was registered on 19.12.2002 by the police under Sections 498A/406 of IPC;

iv. Charge-sheet was filed by the prosecution on 27.07.2004 and the cognizance was taken on the same day.

13. As far as the issue of cognizance is concerned, it has been held by the Constitution Bench Hon'ble Apex Court in case of ***Sarah Mathew v. Institute of Cardio Vascular Diseases*** *(2014) 2 SCC 62* that for the computation of period of limitation under Section 468 of Cr.P.C., the relevant date is the date of filing of the complaint or the

date of institution of prosecution, and not the date on which the Magistrate takes cognizance. The observations in this regard are reproduced hereunder:

> "39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Kale, Japani Sahoo* and *Vanka Radhamanohari (Smt.)*. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim *'nullum tempus aut locus occurrit regi'*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim *'vigilantibus et non dormientibus, jura subveniunt'*. Chapter XXXVI of the Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the IPC, which have lesser punishment may have serious social consequences. Provision is, therefore, made for condonation of delay. **Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *'actus curiae neminem gravabit'* which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims.** Provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.
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> 51. In view of the above, **we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.** We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law…"
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> (Emphasis supplied)

14. While holding the aforesaid, the Hon'ble Apex Court had upheld its previous decisions in cases of ***Bharat Damodar Kale v. State of A.P.*** *(2003) 8 SCC 559* and ***Japani Sahoo v. Chandra Sekhar Mohanty*** *(2007) 7 SCC 394*. In ***Bharat Damodar Kale*** *(supra)*, the Hon'ble Apex Court had observed as under:

> "11. If this interpretation of Chapter XXXVI of the Code is to be applied to the facts of the case then **we notice that the offence was detected on 5.3.1999 and the complaint was filed before the court on 3.3.2000 which was well within the period of limitation, therefore, the fact that the court took cognizance of the offence only on 25.3.1999 about 25 days after it was filed, would not make the complaint barred by limitation**."
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> (Emphasis supplied)

15. Similarly, in ***Japani Sahoo*** *(supra)*, it was held as under by the Hon'ble Apex Court:

> "48. **So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage.** Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.
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> 52. In view of the above, **we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court.** We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.
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> 53. In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint,

> therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible."
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> (Emphasis supplied)

16. For resolving the controversy in the present petition, it will be most useful to take note of the decision of Hon'ble Apex Court in case of ***Amritlal v. Shantilal Soni*** *(2022) 13 SCC 128*, wherein it has been held as under:

> "3. Shorn of unnecessary details, the relevant background aspects of the matter are that **on 10.07.2012, the present appellant filed a written complaintto the Superintendent of Police, Khachrod whileclaiming that he had entrusted 33.139 Kg of silver to the respondent; and on 04.10.2009, on the demand being made, the respondent refused to return the same. On the complaint so filed by the appellant**, FIR bearing No. 289 of 2012 came to be registered and, after investigation, the **police filed charge-sheet dated 13.11.2012** for the offences aforesaid against the accused persons, respondent Nos. 1 and 2 herein. Thereupon, the Judicial Magistrate, First Class, Khachrod **took cognizance on 04.12.2012**.
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> 6. However, on such orders being challenged, the High Court has, in the impugned order dated 06.03.2019, formed the opinion that taking cognizance of this matter on 04.12.2012 was barred by limitation. The High Court has, thus, in exercise of its powers under Section 482 CrPC, quashed the proceedings. The sum and substance of the reasoning of the High Court could be noticed in the following: -
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> > "19. On cumulative consideration of the aforesaid discussion, this Court is of the view that the date of offence is very well known to the complainant i.e. 04.10.2009 and he **lodged FIR on 19.07.2012** i.e. after 2 years 9 months of the alleged incident and the Police has filed

> charge sheet on 04.12.2012 after a period of three years of the alleged incident, on which basis, the Magistrate has taken cognizance of the offence against the petitioners on 04.12.2012 which was barred by limitation, therefore, the trial Court as well as Revisional Court have committed error of law in rejecting the plea taken by the petitioners regarding maintainability of the prosecution on the ground of limitation."
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> 11. Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that **for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence.** The **High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009**."
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> (Emphasis supplied)

17. Thus, for the purpose of computing the period of limitation, the relevant dates taken into consideration by the Hon'ble Apex Court in case of ***Amritlal*** *(supra)* were (i) *firstly*, the date of commission of alleged offence, and (ii) *secondly*, the date of filing of complaint with the police, and not the date of registration of FIR or filing of chargesheet or taking of cognizance.

18. By applying the aforesaid principle of law in the present case, this Court notes that the complaint in this case was filed by the petitioner on 03.07.2002 with the CAW Cell, on the basis of which an FIR was registered by the police on 19.12.2002. The date on which the petitioner had left her matrimonial home, allegedly due to acts of cruelty by her husband and in-law, was 08.09.1999. This is

also the date which has been considered by the learned Trial Court as the last date of offence. Thus, considering the date of commission of offence as 08.09.1999 and the date of filing of complaint as 03.07.2002, **this Court finds that the complaint was lodged by the petitioner within a period of *two years and ten months* from the date of commission of alleged offence, which is within the period of limitation of *three years* as per Section 468 of Cr.P.C. Therefore, the cognizance, which had been taken by the learned Magistrate *vide* order dated 27.07.2004, was not barred under Section 468 of Cr.P.C. and consequently, there was no occasion to condone any delay.**

19. However, this Court also notes that the petitioner had mentioned, in the complaint dated 03.07.2002, about an incident of 06.12.1999 when she had been allegedly beaten by the respondent no. 2 and had been threatened to withdraw an earlier complaint filed by her. She had further mentioned that she had given birth to a daughter on 27.04.2000 and she had to face hardships since her belongings including jewelry, clothes, etc. had not been returned by the respondents, thereby causing mental cruelty to her. Therefore, it *prima facie* appears that the Courts below also erred in assuming the date of petitioner leaving her matrimonial home i.e. 08.09.1999 as the last date of offence, by ignoring these two incidents. Going even further, this Court notes that it has been held by the Hon'ble Apex Court in case of ***Rupali Devi v. State of U.P.*** *(2019) 5 SCC 384* that the offence of cruelty under Section 498A of IPC does not end with an end to physical acts of torture and upon a woman leaving her

matrimonial home, but emotional distress i.e. the mental cruelty may continue even when the woman resides at her parental home. The relevant observations are as under:

> " 9. At this stage it may also be useful to take note of what can be understood to a continuing offence. The issue is no longerres integra having been answered by this court in *State of Bihar v. Deokaran Nenshi (1972) 2 SCC 890*. Para 5 may be usefully noticed in this regard.
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> > "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It isone of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."
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> 14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of

> physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. **Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.** "
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> 15. ……The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. **Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home.** The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home."
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> (Emphasis supplied)

20. In the present case also, the petitioner had categorically mentioned in her complaint dated 03.07.2002 that her sufferings had continued till the date of filing of complaint, and that her belongings such as jewelry and clothes had not been returned by her husband and in-laws for 2½ years, and she was still awaiting to return to her matrimonial home. Therefore, if these allegations in the complaint and incidents as referred in the previous paragraph are taken into

consideration for the purpose of computation of period of limitation, it would *prima facie* appear that there was no delay at all, on the part of the petitioner, in filing the complaint for an offence under Section 498A/406 of IPC. Be that as it may, it will be for the Trial Court concerned to decide at appropriate stage as to whether such incidents or such allegations would ultimately fall within the ambit of Section 498A of IPC or not.

Impugned Judgment is Liable to Be Set Aside

21. As far as the impugned judgment is concerned, the same is liable to be set aside on two grounds.

22. ***Firstly***, as held above, the bar under Section 468 of Cr.P.C. was not attracted in the present case since the cognizance was not time-barred as the complaint had been filed by the petitioner with the police within the prescribed period of limitation. Thus, the question framed by the learned Sessions Court i.e. whether after taking cognizance of the offence of time barred case, it could have condoned delay at the stage of framing of charge, had been framed wrongly since the case was not time barred.

23. ***Secondly***, after arriving at a conclusion that the cognizance was time barred, the learned Session Court also went ahead to assess as to whether the delay should have been condoned in this case on the basis of its merits and while refusing to condone the same, the learned Sessions Court recorded the following reasons, which in this Court's opinion, were untenable in law:

"In the present case unlike the Ramesh's case (supra) relied upon by the learned trial court in the impugned order the complainant is a police officer and is supposed to be a tough person, used to deal with hard situations, by virtue of her job which includes her handling the criminals besides tough and hard job of police officer. Such a strong and tough person is not only almost immune to be pressurized but also can be harsh and strong in reaction to other persons going against her wishes. A woman police officer knowing the law and rules pertaining to crime detection and investigation and trial before court, therefore, cannot be equated to an oppressed housewife who is subjected to cruelty by her husband and in laws and the aforesaid observation in Arun Vyas's case seems to apply to such a wife and not to a strong woman police officer wife dealing with hardened criminals daily in discharge of her official duties. However, it cannot always be a case that a woman wife working in police is an aggressor and not subject to cruelty. She can also be subjected to cruelty by her husband and in laws. But when she being conversant with law on the subject has roped in the five sisters which include four marred sisters of her husband besides aged mother in law and father in law (since deceased) of complainant the possibility of false implication of accused persons cannot be ruled out particularly when as per statement U/s 161 Cr. P.C. of mother of complainant the complainant wife came to rer parents in September 1999 due to marriage of her sister but accused husband did not take her back to matrimonial home. When complainant wife is in full know of investigation procedure and law and by living separate from revisionists since September 1999 has lodged FIR/complaint in 2002, there certainly is unexplained delay in lodging FIR. Further after revisionists/accused persons were granted bail, complainant moved application for cancellation of bail alleging threatening SMS messages and phone calls to her by accused persons which was dismissed on 25.3.2008 by the learned trial court observing that SMS are not threatening but only a request to talk/meet. The phone call in which accused husband is alleged to have stated "Tujhe dekh loonga" also not constitute threat specially when not only the accused husband but also the complaint is SI.

In view of above the chances are more towards false implication of the revisionists/accused persons than genuine case of cruelty/ harassment of the complainant wife so under these circumstances of the delay should not have been

> condoned by trial court u/s 473 Cr. P.C. even if it was authorised to do so at the stage of charge
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> In view of the above discussion it is clear that in the present case the possibility of false implication of the accused persons cannot be ruled out owing to the complainant being police officer who has implicated whole of the family of her husband in the criminal case. Therefore, condonation of delay in filing the challan before learned Metropolitan Magistrate does not seem to be appropriate by taking recourse to Section 473 CrPC thereto at the stage of framing of the charge…"

24. After going through the aforesaid observations, this Court is of the opinion that in the present case, what primarily has weighed in the mind of the learned Sessions Court while discharging the accused under Section 498A of IPC is that since the petitioner herein was working as a Police officer in Delhi Police, the offence in question could not have been committed against her.

25. **In this Court's opinion, the finding is perverse and is not based on the principles of criminal jurisprudence and fair trial, but on the basis of probabilities, which too, is based on an unjustified perception and bias that a person who is working a s a police officer can never be a victim of domestic violence.** A criminal case and trial cannot be driven by probabilities or perceptions but has to be adjudicated on the basis of facts, which are apparent from the record.

26. While deciding the question of framing of charge, **the opinion of a court of law cannot be either blinded or prismed through any stereotype perception about any gender or perception about any profession**. This could amount to holding that a person in a

particular profession will behave always in a way as perceived by the public to ideally behave. For example, stating that some professions are noble and full of compassion, sympathy and love, would not mean that a person in such professions cannot commit an offence. People tend not to mix up their professional and personal lives and therefore, a person irrespective of gender or the profession one is engaged in, will behave according to his or her own circumstances, upbringing, orientation and nature etc. in most cases, if not in all. No two humans can generally be the same. Some may want to tolerate violence and other intolerable behavior for a long period in the hope of saving his or her marriage, whereas some may want to snap matrimonial ties after a single incident of violence or due to incompatibility issues. The tolerance level and the hope in change of human nature as well as one's fear of losing social reputation due to a failed marriage may vary and differ from individual to individual, and may at times also depend upon the strata of society they belong to. At times, the family circumstances of a partner may also have a bearing on such prolonged period of tolerating violence or incompatibility, and may also include societal pressures to appear to have a successful marriage.

27. The Courts have to remain aware of the existing hard realities of lives of people living in the society, of which the judges are also part of. Decisions cannot be made in state of utopia, one has to not only be compassionate and sensitive towards the people and circumstances, but also backgrounds which the parties appearing before them belong to. The Courts have to be guided by the law on

framing of point of charge, when dealing with a case which is still at the stage of charge as the appreciation of the material on record at the stage of framing of charge and appreciation of evidence after testimonies of witnesses are recorded at the final stage of trial is different. Unfortunately, the learned Sessions Court has not discussed the specific incidents of demand of dowry and the torture meted out to the petitioner due to bringing insufficient dowry and the specific allegations levelled against the respondents in this regard. Moreover, the present case also presents a contradictory view where both the husband and the wife are working on equal status/ post in Delhi Police, however, the position of the wife as police officer has been held against her observing that since she is a Police officer, she cannot be intimidated, harassed, dowry cannot be demanded from her, she cannot be tolerant in order to save her marriage, totally ignoring her specific allegation and submission that she had kept on waiting and hoping her return to her matrimonial home and saving her marriage. Conversely, it has been held that since the accused husband is in Police, he will not intimidate his wife. This will also amount to holding that a man or woman in police can neither be a victim nor an offender, or that the persons in police or any other profession where persons hold position of power will always behave ideally or will have perfect marriages and further in case they will face challenges in their marriages, they will behave as perfect human beings and the women in power will never make compromises to save their marriages or will not tolerate such incidents of challenges

in matrimonial life which women in other profession or home makers make.

28. In this Court's opinion, **humans by their nature are not the same and their respective professions or professional lives may not always guide them in their private lives, which is why they are called as private lives.** People can be different and rather entirely different in their **public and private lives, therefore, a person's professional life and professional behavior and his or her personal life and behavior in personal relationships may be entirely different and contrary to each other.**

29. In this Court's opinion, **a woman or a man undergoing challenging situations in their personal lives, may put up a brave front and continue to excel in their professional life and position, which should go to their credit, and not discredit.** This is true not about women alone, but men also, as they too face challenging personal situations in their personal lives.

30. **But for a judge to adjudge a case**, it will be the law on the issue, the judicial precedents and the facts as well as material collected by the investigating agency, which has to form the basis of arriving at a conclusion and not the possibilities, probabilities or perceptions and biases about a gender or a profession.

COMBATING HIDDEN BIASES & UPHOLDING GENDER NEUTRALITY IN JUDICIAL DECISION-MAKING

31. Judges bear the utmost responsibility of ensuring that every individual, regardless of gender, deserves fair treatment under the

law. It is important for the judges to not forget that the **idea of being gender neutral** while authoring judgments, not only means that the terminology employed and words used in the judgment are to be gender neutral, but also means that the mind of a judge ought to be free from preconceived notions or prejudices based on gender or profession. **The essence of gender-neutrality must permeate through every line of a judgment,** and a judge must cultivate thoughts that are inherently gender-neutral.

32. **Hidden biases, often lurking in one's mind, are the enemies of an impartial, gender-balanced and equitable judgment.** Though these biases, often ingrained in societal norms and cultural attitudes, can subtly influence the perceptions of a judge and the decision-making process, it is for a judge to remain unbiased in his mind and his words to ensure that justice is administered impartially to all, as per law.

33. **The present case of a female police officer, deemed incapable of being victimized, solely due to her profession is an illustration of the insidious nature of our hidden biases.** To harbor assumptions, especially as a judge, that a woman, by virtue of her profession as a police officer, cannot possibly be a victim in her own personal or matrimonial life, is a form of injustice of its own kind and one of the highest kinds of perversity which can be seen in a judgment. Judicial decisions, premised on such assumptions, are examples of court's refusal to recognize the complex realities of people's lives, and defiance of law, logic and empathy.

34. **It is important to acknowledge the unique characteristics of a case of domestic violence and cruelty, particularly in our country, and concerning women who occupy positions of authority and command in their professional lives.** Despite wielding influence and leadership in their workplaces, these women may often find themselves vulnerable and powerless within their matrimonial homes and may get subjected to abuse and mistreatment by their spouses and in-laws. In the case at hand, the petitioner who is a police officer by profession would have faced the challenge of concealing her victimization, in a criminal justice system that expects her to be a protector of others against domestic violence. Being a defender or protector of other victims, and at the same time, being a victim of domestic violence in her own personal life, the petitioner may have had the fear of being stigmatized or disbelieved if she were to disclose her plight.

35. Moreover, to dismiss the sufferings of women in positions of authority as mere fabrication or deceit would be grave injustice to victims of domestic violence, and holding so would also be equal to holding that no woman who is either a police officer or an officer of administrative services or even a judicial officer or ay other woman considered empowered by societal norms or in a position of authority or dominance will ever be considered as a victim. Therefore, a court of law cannot make sweeping generalizations about the credibility of the allegations levelled in a complaint on the basis of the gender of the victims and their professional stature. The community always

expects that judges don the lens of gender-neutrality and impartiality, brushing aside any veil of gender bias that may cloud their vision.

36. The empowerment of women in society and their hard work in achieving success should, at no cost, should be employed to their disadvantage to either diminish their status or undermine their achievements, or deprive them of legal protection or privileges afforded to other women by law. Every woman, regardless of her position or background, deserves equal respect, recognition, and access to legal protections. This idea extends to men as well. Just as women should not be unfairly treated or disempowered based on their gender, men should also be free from discrimination or ridicule. Gender neutrality in judgments does not entail favouring one gender over another, but treating all persons appearing before the Courts equally, and premising the on legal principles, evidence, and fairness, without bias or discrimination based on gender.

INTEGRATING GENDER SENSITIVITY IN JUDICIAL EDUCATION

37. In the present case, it is evident that the principles of justice and equality under the law were overlooked, and undue emphasis was laid on the gender and the professional background of the complainant. The focus of the adjudicating authority, instead of being the material before it and its assessment on merit, totally shifted only to the profession of the petitioner and the finding against her that a petitioner being a police officer could not have been a victim of domestic violence. The assumption that the complainant, as a police

officer, must have inherently possessed knowledge of law for her own protection by herself is not only flawed but also against the fundamental principles of justice. It is crucial that justice be blind to such considerations and that cases be adjudicated solely on the merits of the law and the evidence presented before a Court of law, ensuring fairness and equality for all parties involved.

38. In this background, this Court is also reminded of the **importance of judicial education**, which plays a pivotal role in ensuring the effectiveness and integrity of the legal system, especially in the context of evolving societal perceptions and standards of sensitivity. **As society progresses, so too must the judiciary evolve to reflect changing values and expectations**. One crucial aspect of this evolution is the cultivation of sensitivity among judges towards diverse perspectives, experiences, and identities.

39. Judicial education not only aims to train those who are to join as judges, but act as a constant and continuing judicial education of the judges in the judicial academies. The **distinction between legal education and judicial education** is important to be understood by all concerned. While legal education imparts knowledge of law, judicial education hones the skills necessary for the judicious application of these laws while adjudicating cases.

40. Given the complexity of contemporary legal disputes, particularly in matters where there may not be only two genders but more in view of different sexual orientations and preferences, the judicial academies, which carry the most important burden of training their own protégés, must include in their curriculum the chapters

addressing the perils of unrecognized gender and other biases which get reflected in the judgments.

41. It should be the **prime duty of the judicial academies to ensure that those who adorn the golden chairs of justice and are in command of the chariot of justice, should not see those who appear before them with spectacles and prisms of gender biasness but should at all times write their judgments wearing spectacles of gender neutrality, impartiality, equality and remaining aware of any hidden biases or perceptions one may hold as a judge**.

42. **Community will judge the judicial system through its decisions and judgments which are based on reasons**. If the judgments are based on hidden or apparent biases or perceptions, the community which looks up to the judicial system may also hold them to be the path they have to tread on. Therefore, the **judicial academies** while imparting judicial education may take into account that as part of their continuing judicial education and training programs for the judges, they hold multiple awareness and sensitization conferences and training programs to sensitize the judges about the importance of authoring judgments free from gender biases or professional stereotypes, and keeping themselves focused on the merits of the case and substance of allegations mentioned in the complaint filed. Further, the law on charge and appreciation of material at the time of framing of charge be also made a part of such training as the court is burdened with instances where judgments

have been passed at the stage of charge as if the judgment was being passed after the conclusion of trial.

43. This Court, therefore, requests the Delhi Judicial Academy that in view of today's rapidly changing world, issues such as gender equality, cultural diversity, etc. which are at the forefront of legal discourse, be made part of the curriculum and continuous judicial education program conducted by the Academy. Judicial education in this regard would ensure that judges will possess the knowledge, awareness, and empathy to adjudicate cases involving these complex and sensitive matters fairly and impartially. This ongoing education and training, focused not only on legal principles and procedures but also on understanding the diverse backgrounds and lived realities of those who come before the court, will go a long way in changing the society's stereotypical thinking too as it will result in better drafted judgments. Such training will also foster a deeper understanding of different perspectives and experiences, and will help judges make more informed and equitable decisions, thereby enhancing public trust and confidence in the legal system.

44. **Let a copy of this judgment be forwarded to the Director (Academics), Delhi Judicial Academy for necessary action and compliance.**

DECISION

45. For the reasons recorded in the preceding discussion, this Court is of the view that the cognizance in this case was not barred by limitation. Further, a perusal of the record reveals that there are

specific allegations of demand of dowry, cruelty and torture due to bringing insufficient dowry with specific dates in the complaint which have not been discussed by the learned Sessions Court to arrive at a conclusion regarding *prima facie* view being made, any offence being made out under Section 498 IPC. Therefore, this Court is of the view that there was no infirmity with the order dated 04.06.2006 passed by the learned Metropolitan Magistrate insofar as it framed charges against the accused persons/respondents under Sections 498A/34 of IPC.

46. Thus, the impugned judgment dated 04.10.2008 passed by learned Sessions Court is set aside.

47. Accordingly, the present petition is disposed of, alongwith pending application If any, in above terms.

48. A copy of this judgment be forwarded to the concerned Trial Court for necessary information.

49. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 1, 2024/*At*