



2025:DHC:3441



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:08.05.2025

+ **CRL.M.C. 5280/2019 and CRL.M.A. 38309/2019**

GURPAL KAUR

.....Petitioner

versus

STATE & ANR.

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vinayak Goel, Mr. Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advocates.

For the Respondent : Mr. Manoj Pant, APP for the State with SI Sanjeev, P.S. Kalkaji.

Mr. Rakesh Vatsa, Mr. Jeetin Jhala, Mr. Shakunt Jhala, Ms. Reenila Jhala Advocates for R-2 (through VC).

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed against the order dated 27.05.2019 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), South East District, Saket Courts, New Delhi



in Criminal Revision 88/2018. By the impugned order, the learned ASJ dismissed the revision petition filed by the petitioner challenging the order dated 14.10.2017 passed by the learned Metropolitan Magistrate ('MM') whereby charges were framed against Respondent No. 2 for offences under Sections 417 and 498A of the Indian Penal Code, 1860 ('IPC'). Petitioner's grievance is that charges should also have been framed for the offences under Sections 406/468/471/420 of the IPC.

2. The brief facts of the case are that an FIR being FIR No. 271/2009 dated 17.07.2009 was registered at Police Station Kalkaji for offences under Sections 498A/406/420/468/471 of the IPC on a complaint given by the petitioner. It is alleged that the petitioner was constantly subjected to cruelty by her husband/Respondent No. 2 and her in-laws in relation to the items received in dowry. It is alleged that Respondent No. 2 forcefully took the petitioner to the doctor in order to terminate her pregnancy. It is alleged that Respondent No. 2, and his family members, on one occasion added poison to the petitioner's food, and also threatened the petitioner and her father of dire consequences should they report about the same to the police. It is alleged that on that occasion, the petitioner, under threat, had given a statement to the police that she had consumed some wrong medicine by mistake. It is further alleged that the petitioner was beaten at the hands of the Respondent No. 2 and his family members.



3. It is alleged that in June 2006, Respondent No. 2 wanted to buy a house for which Respondent No. 2 took all the gold and diamond jewellery of the petitioner. It is alleged that Respondent No. 2 also took away a major portion of the salary received by the petitioner to pay the EMI for Home Loan. It is alleged that Respondent No. 2 on several instances demanded money from the petitioner. It is alleged that subsequently when the petitioner, fearing her life, lodged a complaint in Women Cell, Patiala regarding threat to her life and harassment, Respondent No. 2 sent divorce decree to the Women Cell which Respondent No. 2 had obtained by impersonation, forgery and playing fraud upon the Court.

4. Chargesheet in the present case was filed against Respondent No. 2 for offences under Sections 498A/406/420/468/471 of the IPC.

5. The learned MM, by the order dated 14.10.2017 framed charges against Respondent No. 2 for offences under Sections 498A/417 of the IPC. It was noted that the petitioner had levelled allegations in relation to the demand of dowry, which were sufficient to frame charge under Section 498A of the IPC. It was noted that in relation to the offence under Section 406 of the IPC, the petitioner had alleged that Respondent No. 2 took her gold and diamond jewellery. It was noted that the same did not amount to 'entrustment' for the purpose of framing of charge under Section 406 of the IPC.

6. It was noted that in relation to the allegations under Sections 468/471 of the IPC, the said offences were committed in Tis Hazari



Courts, and that the learned MM lacked territorial jurisdiction to try the said offence. It was noted that the offence under Section 468/471 of the IPC could not be said to be related to offence under Sections 498A/406 of the IPC in terms of Section 180 of the CrPC. Consequently, the learned MM noted that no sufficient material existed to frame charge under Sections 468/471 of the IPC.

7. It was noted that the petitioner alleged that Respondent No. 2 had obtained a divorce decree by playing fraud with the Court. It was noted that as per the material available on record, there existed material to frame charge under Section 417 of the IPC as damage was caused to the petitioner as well by the alleged act of Respondent No. 2. The learned MM however did not frame charges under Section 420 of the IPC noting that the offence of cheating had been committed upon the Court. Consequently, the learned MM framed charges under Section 498A/417 of the IPC against Respondent No. 2.

8. By the impugned order, the learned ASJ, dismissed the revision petition preferred by the petitioner. It was noted that from a perusal of the chargesheet, it was evident that the petitioner had levelled several allegations against Respondent No. 2 and her in-laws. It was however noted that some of the allegations for instance the allegation of termination of pregnancy could not be substantiated during the course of investigation. It was noted that the Investigating Officer concluded that no sufficient evidence was found to chargesheet the in-laws of the petitioner.



9. It was noted that from the chargesheet it was evident that Respondent No. 2 had obtained a decree of divorce against the petitioner from Tis Hazari Court by forging signature, photograph of the petitioner on the divorce petition. It was noted that the said decree of divorce was recalled by the learned ADJ on an application filed by the petitioner, and that Respondent No. 2's attempt to challenge the said order recalling the decree of divorce was dismissed by this Court and the Hon'ble Apex Court. It was noted that the offence, if any, was committed before Tis Hazari Court, which had passed the divorce decree. It was noted that the Tis Hazari Court did not fall within the jurisdiction of Police Station Kalkaji where the FIR was registered.

10. The learned ASJ noted that the thrust of the petitioner's case as alleged in the FIR was based on the cruelty meted out to her by Respondent No. 2, and the same offence had no connection with the offence of forgery which was committed at Tis Hazari Courts. It was consequently noted that the Court exercising jurisdiction over the Police Station Kalkaji would not be competent to take cognizance of the offence of forgery committed at the Tis Hazari Court by virtue of Section 180 of the CrPC.

11. It was noted that no clear allegation of entrustment of any property with Respondent No. 2 which was misappropriated by him had been levelled. Consequently, by the impugned order, the learned ASJ dismissed the revision petition preferred by the petitioner.



12. The learned counsel for the petitioner submitted that the learned ASJ did not consider that Respondent No. 2 had fraudulently obtained a decree of divorce, and the same in itself depicted that the petitioner was subjected to cruelty. He submitted that it can be inferred that Respondent No. 2 intended to abandon the petitioner fraudulently which in itself is an act of cruelty.

13. He submitted that in the present case, it can evidently be seen that the petitioner's gold and diamond ornaments alongwith the money was entrusted to Respondent No. 2, and consequently the basic ingredients of Section 406 of the IPC had been made out. He submitted that charges also be framed under Sections 468/471/420 of the IPC since Respondent No. 2 had forged the petitioner's signature to obtain a divorce.

Analysis

14. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

15. The Hon'ble Apex Court, in the case of ***Krishnan v. Krishnaveni : (1997) 4 SCC 241***, had observed as under:



*“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. **In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.**”*

(emphasis supplied)

16. By the present petition, the petitioner essentially seeks framing of charge against Respondent No. 2 under Sections 406/419/420/468/471 of the IPC.

17. Since the petitioner has assailed the impugned order whereby the charges under Sections 498A/417 of the IPC were framed against Respondent No. 2, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge



(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

18. The Hon’ble Apex Court in ***Union of India v. Prafulla Kumar Samal*** : (1979) 3 SCC 4, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. *Inter alia*, the following principles were laid down by the Court:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

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(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.**”

(Emphasis supplied)



19. The Hon'ble Apex Court, in the case of *Sajjan Kumar v. CBI : (2010) 9 SCC 368*, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a prima facie case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the



prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

20. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive



opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

21. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

22. The petitioner is essentially aggrieved that charges also ought to have been framed under Section 406 of the IPC given that the petitioner had given her gold and diamond jewellery to Respondent No. 2, and under Sections 468/471/420 of the IPC since Respondent No. 2 had forged the signature of the petitioner in order to obtain a decree of divorce and had cheated the Court.

23. It is pertinent to note in order to attract the offence under Section 406 of the IPC, it is essential that there is an entrustment of property. In accordance with Section 405 of the IPC, an offence of criminal breach of trust is committed when a person entrusted in any manner with a property or with dominion over it, dishonestly misappropriates the same. The Hon'ble Apex Court in the case of



Rashmi Kumar v. Mahesh Kumar Bhada: (1997) 2 SCC 397 while delineating the meaning of the term “entrustment” observed as reproduced hereunder:

“13.The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.....”

24. In the present case, it is the case of the petitioner that Respondent No. 2 had taken the gold and diamond jewellery of the petitioner for the purpose of buying a house. Upon a perusal of the allegations against Respondent No. 2, it is apparent that the said jewellery was given to Respondent No. 2 by the petitioner herself. It is not uncommon for husband and wife to buy properties where both the husband and the wife make contributions. It is not *prima facie* the case of the petitioner that Respondent No. 2 had coercively taken the jewellery of the petitioner and had subsequently misappropriated the same. The allegations thus do not *prima facie* reflect an ‘entrustment’ of property so as to attract Section 406 of the IPC. In that light, the learned MM rightly noted that there was no sufficient material to frame charge under Section 406 of the IPC.



25. The petitioner is also aggrieved that charges also ought to have been framed for the offence of cheating as Respondent No. 2 had obtained a decree of divorce from the learned Trial Court by forging the signatures of the petitioner. It is seen that the said decree of divorce was subsequently recalled by the learned ADJ and the SLP preferred by Respondent No. 2 against the recall of the decree of divorce was dismissed. Further, the learned MM and ASJ noting the act of cheating committed against the petitioner had rightly framed charges under Section 417 of the IPC.

26. The learned MM and ASJ did not frame charges under Sections 468/471/420 of the IPC against Respondent No. 2 noting that the offence of forgery and cheating was played upon the Court outside the jurisdiction of Police Station Kalkaji and in the jurisdiction of Tis Hazari Courts. Without commenting on the issue of whether the Court had territorial jurisdiction or whether the same fell under Section 180 of the CrPC or not, it is pertinent to note that insofar as the charges in relation to forgery and fraud are concerned, the same relate to an offence committed by Respondent No. 2 on the Court.

27. The allegations relate to Respondent No.2 having adduced a document with the forged signatures of the petitioner with an intention of obtaining a decree of divorce. *Ex facie*, the said allegations seem to fall squarely under the ambit of Section 193 of the IPC which prescribes the punishment for giving false evidence or fabricating the same for the purpose of being used in any stage of a judicial proceeding. The procedure in such offences is prescribed under



Section 340 of the CrPC whereunder an application is to be made to the concerned Court in this regard. Thus, for the allegations in this respect, the appropriate remedy would lie before the concerned Court before which the false evidence was adduced and for the said purpose, no action can be initiated in the present proceedings.

28. It is relevant to note at this juncture that the petitioner has invoked the inherent jurisdiction of the Court. The proceedings under Section 482 of the CrPC cannot be misconstrued to be a second revision. As noted above, the inherent jurisdiction ought to be exercised sparingly, only in cases where there is a failure of justice, especially when the Sessions Court has already exercised revisional jurisdiction. Upon a consideration of the totality of facts and circumstances of the present case, this Court does not deem it expedient to interfere with the impugned order in the interests of justice.

29. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 08, 2025