



2025:DHC:1077



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

% **Date of order: 20th February, 2025**

+ W.P.(CRL) 696/2022

RAJNISH KUMAR BISWAKARMA & ORS.Petitioners

Through: Mr. Vivek Sharma, Mr. Vikash
Sharma and Ms. Devanshi Sharma,
Advocates

versus

THE STATE & ANR.Respondents

Through: Mr. Yasir Rauf Ansari, ASC with Mr.
Alok Sharma and Mr. Vasu Agarwal,
Advocates with ASI Usha and SI
Vikash Bhardwaj, P. S. M.S. Park
Mr. Sudhir Tawatia, Mr. Mehul
Gulati, Mr. Tarun Maan, Mr. Ankush
and Mr. Ashish Dabas, Advocates for
R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition has been filed on behalf of the petitioners under Article 226 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), seeking quashing of the FIR bearing No. 383/2019 registered against the petitioners under Sections 498A/406/34 of the Indian Penal Code, 1860 (hereinafter "IPC") and Section 4 of the Dowry Prohibition Act, 1961 ("DP Act") at Police Station - Mansarovar Park, Delhi



and the consequential proceedings emanating therefrom.

2. The brief facts of the case, as stated in the petition, are as follows:
 - a. On 6th July, 2018, the marriage between the petitioner no. 1 and the respondent no.2/complainant was solemnized in Delhi according to Hindu rites and customs. From the said wedlock between the two, no child was born.
 - b. It is alleged that the family members of the complainant repeatedly interfered in their matrimonial life. Being aggrieved by the said interference and alleged demand for money, the petitioner no.1 lodged a complaint against the respondent no. 2 with the Commissioner of Police, Delhi on 5th March, 2019.
 - c. Thereafter, on 8th May, 2019, due to some temperamental differences between the petitioner no. 1 and the complainant, the petitioner no. 1 filed a petition under Section 12 of the Hindu Marriage Act, 1955 (hereinafter “HMA”) before the Court concerned seeking a decree of nullity of the marriage solemnized between them.
 - d. Subsequently, on 15th November, 2019, at the instance of the complaint filed by the complainant/respondent no. 2, the instant FIR bearing No. 383/2019 was registered against the petitioners under Sections 498A/406/34 of the IPC at Police Station - Mansarovar Park, Delhi.
 - e. Thereafter, the petitioner No.1 filed the first anticipatory bail application in the said FIR, which was dismissed as withdrawn



vide order dated 20th January, 2020 by the Court of learned ASJ, Karkardooma Court, Delhi.

- f. The petitioner No. 1 subsequently filed a petition before the Coordinate Bench of this Court, bearing CrI.M.C. No. 1838/2020, seeking quashing of the instant FIR and the proceedings emanating therefrom. The said petition was dismissed as withdrawn vide order dated 17th November, 2020.
- g. On 23rd June, 2021, the petition filed by the petitioner no. 1 under Section 12 of the HMA seeking a decree of nullity of the marriage solemnized between the petitioner no. 1 and the complainant was allowed. Consequently, their marriage was annulled by a decree of nullity under Section 12 of the HMA.
- h. Thereafter, the petitioner no. 1, in anticipation of a coercive action by the Investigating Officer, filed the second anticipatory bail application dated 9th July, 2021. The said application was also dismissed by the Court concerned vide order dated 29th July, 2021.
- i. The petitioner no. 1 then filed another anticipatory bail application bearing No. 2896/2021 before the Coordinate Bench of this Court which was disposed of by this Court vide order dated 9th August, 2021, with the direction that the petitioner no.1 shall be served a notice of 7 days prior to his arrest by the investigating officer.
- j. After conducting investigation into the allegations made in the instant FIR, the investigating agency filed a chargesheet dated 15th October, 2022, wherein, the petitioner no.1 was arrayed as an



accused in the present case under Sections 498A/406/34 of the IPC and Section 4 of the DP Act. Being aggrieved by the instant FIR and the consequential proceedings emanating therefrom, the instant petition has been filed before this Court by the petitioners seeking quashing of the same.

3. Learned Counsel appearing on behalf of the petitioners submitted that the allegations made in the present FIR are based on concocted story as the complainant has roped the persons who are not family members of the petitioner no. 1 and were only guests in his marriage.
4. It is submitted that the investigation agency failed to take into consideration that charge under Section 498A of the IPC could not be framed against the petitioner no. 1 since vide the judgment dated 23rd June, 2021, passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 557/2019, the marriage between the petitioner no.1 and the complainant was annulled under Section 12 of the HMA by way of an *ex-parte* decree of nullity.
5. It is further submitted that considering the non-existence of any legal marriage between the petitioner no.1 and the complainant, the instant FIR and the consequential proceedings emanating therefrom are nothing but an abuse of the process of law by the complainant.
6. It is submitted that pursuant to the aforesaid decree dated 23rd June, 2021, the petition under Section 125 of the CrPC filed by the complainant was withdrawn *vide* order dated 18th November, 2021, passed by the learned Judge, Family Courts, Shahdara, Delhi in Case bearing No. 519/2019.



7. It is submitted that the instant FIR registered against the petitioners is merely an afterthought, based on frivolous claims and a counterblast measure against the complaint made by the petitioner on 5th March, 2019 lodged by the petitioner no.1 before the Commissioner of Police, New Delhi.

8. It is submitted that the petitioner nos. 2 and 3 had merely attended the wedding ceremony of petitioner no.1, after which they never went to the matrimonial house of the petitioner no.1 and the complainant, therefore, the allegations made against them are false.

9. Therefore, in view of the foregoing submissions, it is prayed that the present petition may be allowed, and the reliefs be granted as prayed for.

10. *Per Contra*, learned ASC appearing on behalf of the State and the learned Counsel appearing for the respondent no.2/complainant vehemently opposed the instant petition submitting to the effect that the same may be dismissed being devoid of any merit.

11. Learned Counsel for the respondent no.2/complainant submitted that the marriage of the petitioner no.1 and the complainant was annulled by fraudulently obtaining an *ex parte* decree from the learned Family Court as the petitioner no.1 in his petition under Section 12 of the HMA deliberately mentioned the incomplete address of the complainant and resultantly, the said petition was never served to her.

12. It is submitted that the respondent no.2/complainant moved the learned Principal Judge, Family Court, Patna vide Miscellaneous Case No. 111 of 2022 for setting aside the annulment decree dated 23rd June, 2021 passed by the learned Principal Judge, Family Court, Patna in Matrimonial



Case No. 557 of 2019. It is further submitted that the same was dismissed vide Order dated 25th January, 2023 for *Non-Pairvi* of the respondent no.2.

13. It is submitted that the respondent no.2/complainant has moved an application for restoration of her application seeking setting aside of the annulment decree dated 23rd June, 2021 passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 557 of 2019, which is yet to be decided by the Court concerned.

14. It is submitted that the petitioner no.1 ran away with all the cash, jewellery, clothes and other *stridhan* which was entrusted to him by the complainant, who received it from her mother, and that the petitioner is still in possession of the same.

15. It is submitted that the petitioner no.1 was given gifts, jewellery and a huge amount of cash in the Tilak ceremony, and even after the marriage between the petitioner no.1 and the complainant was solemnized, the petitioner no.1 continued pressurizing the complainant to get more money from the complainant's mother.

16. It is submitted that the *ex-parte* decree of nullity of marriage is under challenge now and therefore, the same cannot be termed as final, thus, the instant FIR may not be quashed on the basis of the same.

17. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed being devoid of any merit.

18. Before adverting to the merits of this case, it is important at this stage to discuss the settled law on the issue of quashing of FIR. In the case of *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, the Hon'ble



Supreme Court had set out the broad categories of cases in which the inherent powers of the Court could be exercised for quashing an FIR. The relevant portion of the judgment is reproduced as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the



same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. Upon perusal of the above quoted judgment, it is clear that the inherent powers of the Courts must be exercised sparingly and with great caution. In terms of the settled principles of law, a Court may quash a complaint under Section 482 of the CrPC if it is satisfied that the allegations made against the accused, even when they are taken at face value and



accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. Further, the Court may also invoke its extraordinary powers to quash a complaint if the allegations made in the complaint are so absurd and improbable that no prudent person may reach a conclusion that there is sufficient ground for proceeding against the accused.

20. Therefore, the question of exercise of the Court's inherent powers under Section 482 of the CrPC to quash criminal proceedings would depend on the facts and circumstances of each case. However, while deciding this question, the Court does not need to determine the genuineness of the allegations, and the evidence placed before it. The Court's exercise is merely limited to a determination as to whether the allegations when taken at their face value, disclose the commission of the offence in question by the accused.

21. The instant FIR is registered against the petitioner no.1 under Sections 498A/406/34 of the IPC and Section 4 of the DP Act, wherein, it is alleged that the petitioner no.1 committed breach of trust, demanded dowry from the complainant and caused harassment to her. Section 498A of the IPC reads as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—



(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

22. From a bare perusal of Section 498A of the IPC, it is made out that the said provision provides for punishment against the husband of a woman and his relatives if they cause cruelty to such woman. In ***Shivcharan Lal Verma v. State of M.P., (2007) 15 SCC 369***, the Hon’ble Supreme Court held as under:

“2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 IPC to be unconstitutional was under reconsideration by the Constitution Bench. The Constitution Bench finally disposed of the matter in Criminal Appeal No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid Constitution Bench decision two questions arise for consideration in this appeal. One, whether the prosecution under Section 498-A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr Khanduja, learned counsel for the appellant so far as conviction under Section 498-A is concerned, inasmuch



as the alleged marriage with Mohini during the subsistence of a valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498-A IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, makes it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned Sessions Judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not find any infirmity with the conviction of the appellants under Section 306 IPC.....”

23. Similarly, in ***P. Sivakumar v. State, 2023 SCC OnLine SC 1737***, the Hon’ble Supreme held as under:

“7. Undisputedly, the marriage between the appellant No. 1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible.”

24. From the above-quoted judgments of the Hon’ble Supreme Court, it is made out that the charges under Section 498A of the IPC would not be



sustainable against the accused if the marriage between the accused and the complainant is found to be null and void.

25. In the present case, it is not in dispute that vide judgment dated 23rd June, 2021 passed by the learned Principal Judge, Family Court, Patna, the marriage between the petitioner no.1 and the complainant solemnized on 6th July, 2018, was annulled by a decree of nullity. The said judgment was challenged before the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 557 of 2019, however, it was dismissed vide Order dated 25th January, 2023 due to non-prosecution by the respondent no.2. This Court also observes that there is no stay on the operation of the judgment dated 23rd June, 2021 passed by the learned Principal Judge, Family Court, Patna, granting the said decree of nullity.

26. As per the settled law, charges under Section 498A of the IPC cannot be sustained if the marriage between the accused (husband and/or his relatives) and the complainant (wife) is declared null and void.

27. In the case at hand, it is observed that the decree, vide which the marriage between the petitioner no. 1 and the respondent no. 2 had been declared null and void, is final as of now, and the respondent no. 2 or the investigation agency has been unable to prove otherwise. Therefore, in the absence of any material to suggest that the decree has been set aside, this Court cannot presume otherwise. Accordingly, since the marriage of the petitioner no.1 and the complainant was annulled by a decree of nullity, no charges under Section 498A of the IPC can be sustained against the petitioners in light of the settled principles of law. Moreover, it is held that



the investigation agency failed to add the charge under Section 498A of the IPC considering the observations made herein above.

28. Therefore, in view of the discussions made in the preceding paragraphs, this Court is inclined to quash the charge under Section 498A of the IPC in the instant FIR and the consequential proceedings emanating therefrom .

29. Moving to the next charge, the petitioner no.1 is charged under Section 406 of the IPC for the commission of the offence of criminal breach of trust. The said provision reads as under:

“406. Punishment for criminal breach of trust. —Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

30. The offence of criminal breach of trust is defined under Section 405 of the IPC, which reads as under:

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust.”

31. In the case of ***Delhi Race Club (1940) Ltd. v. State of U.P., (2024) 10 SCC 690***, the Hon’ble Supreme Court held that the elements of the offence



of criminal breach of trust are multifold. *Firstly*, it includes that there must be entrustment with a person of property or dominion over property and *secondly*, the person so entrusted (a) dishonestly misappropriated or converted the property to his own use, or (b) dishonestly used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract touching the discharge of such trust.

32. It is well-established in law that every act of breach of trust will not result in the commission of the offence of criminal breach of trust, unless there is clear evidence of a manipulating act of fraudulent misappropriation of a property which the accused was entrusted.

33. However, at this stage, this Court merely has to determine if a *prima facie* view can be taken that the allegations against the accused disclose the commission of the offence of criminal breach of trust under Section 406 of the IPC.

34. Upon perusal of the instant FIR and the chargesheet, this Court notes that the allegation made against the petitioner no.1 is that he ran away with the jewellery, cash, clothes and other *stridhan* that he was entrusted with by the complainant/respondent no. 2.

35. The allegations against the petitioner no.1, when taken at their face and accepted in their entirety, show that he was entrusted with property which was used by him in a dishonest manner.

36. Therefore, this Court finds that the allegations made against the petitioner no.1 disclose that a *prima facie* case is made out against him for



the commission of the offence of criminal breach of trust under Section 406 of the IPC, which requires determination by way of trial before the Court concerned in light of the evidence adduced by the parties.

37. At this stage, this Court deems it imperative to discuss the next charge against the petitioner under Section 4 of the DP Act which reads as under:

“4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.”

38. As is evident from the Hon’ble Supreme Court’s ruling in *P. Sivakumar v. State (supra)*, charges under Section 4 of the DP Act can be proceeded with despite the annulment of marriage by a decree of nullity. Therefore, the fact that in the instant case, marriage between the petitioner no.1 and the complainant was annulled vide judgment dated 23rd June, 2021 passed by the learned Principal Judge, Family Court, Patna, has no bearing on the issue of quashing of charges under Section 4 of the DP Act.

39. Section 4 of the DP Act provides for penalty for directly or indirectly demanding dowry from the parents/relatives/guardian of the bride or bridegroom.

40. Upon perusal of the instant FIR and the chargesheet, it is made out that the allegation leveled against the petitioner is that he pressurized the



complainant to ask her mother for more money even after their marriage was solemnized. Further, as per the allegations in the instant FIR, the petitioner no.1 was given gifts, jewellery and a huge amount of cash at the time of Tilak ceremony.

41. This Court finds that the allegations against the petitioner no.1, when accepted in their entirety and taken at their face value, disclose that a *prima facie* case for the commission of the offence under Section 4 of the DP Act is made out, which needs to be determined in trial before the Court concerned in light of the evidence adduced by the parties.

42. Summarily stated, in the preceding paragraphs this Court has held that the charge against the petitioner under Section 498A of the IPC does not survive considering the peculiar facts and circumstances as well as the law posited by the Hon'ble Supreme Court on this point. However, this Court does not find any merit in the contentions of the petitioners *qua* the other charges levelled against them in the FIR and the chargesheet.

43. In view of the discussions held hereinabove, the instant FIR bearing No. 383/2019 registered at Police Station - Mansarovar Park, Delhi and the consequential proceedings emanating therefrom including the chargesheet dated 15th October, 2022 stands quashed to the limited extent of charge under Section 498A of the IPC. It is made clear that the consequential proceedings emanating from other charges in the instant FIR, i.e., Section 406/34 of the IPC and Section 4 of the DP Act shall take its lawful course.

44. Accordingly, the instant writ petition is partly allowed and stands disposed of along with pending applications, if any.



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45. It is made clear that the observations made herein are made only for the purpose of deciding the instant petition and shall not be taken as an expression of this Court on the merits of the case.

46. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 20, 2025

gs/st/ryp

[Click here to check corrigendum, if any](#)