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

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\# **CNR No. DLHC010106532023**

\+ **CRL.M.C. 2115/2023**

RAJESH KUMAR AND ANR. .....Petitioners
Through: Mr. Surjeet Singh & Mr. M.K. Singh, Advs.

versus

STATE AND ANOTHER .....Respondents
Through: Ms. Richa Dhawan, APP.
Mr. Tarun Sharma and Mr. Tushar Datta, Advs. for Respondent No. 2 along with the Respondent-in-person.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') has been preferred by the Petitioners seeking quashing of ***FIR No. 369/2017*** registered at Police Station K.N. Katju Marg, for offences punishable under Sections 498A, 406 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and Section 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as 'the Act'), along with the proceedings emanating therefrom.

2. The Petitioners also assail the order dated 20.05.2022 passed by the learned Additional Sessions Judge - 04 (North), Rohini Courts, Delhi in ***Criminal Revision No. 64/2022***, arising out of the order on charge dated

24.11.2021 passed by the learned Metropolitan Magistrate, Mahila Court - 01, North District, Rohini Courts, Delhi.

FACTUAL BACKGROUND:

3. Petitioner No. 1, Rajesh Kumar, is the husband of Respondent No. 2/complainant, whereas Petitioner No. 2, Rani, is the step-mother of Petitioner No. 1 and the mother-in-law of Respondent No. 2. The marriage between Petitioner No. 1 and Respondent No. 2 was solemnised on 20.02.2002. A daughter, namely Unnati, was born from the wedlock on 06.07.2004.

4. After about one year of marriage, Petitioner No. 1 and Respondent No. 2 shifted from the residence of Petitioner No. 2 to rented accommodation. This circumstance is also recorded in para 9 of the complaint, wherein Respondent No. 2 stated that Petitioner No. 2 had asked the couple to leave the matrimonial house. According to the Petitioners, Petitioner No. 2 thereafter never resumed residence with them. The complaint, however, further alleges that after shifting to rented accommodation, Petitioner No. 1 compelled Respondent No. 2 to obtain money from her parents towards the security deposit and household articles, pursuant to which a sum of Rs.2,00,000/- was allegedly paid to him.

5. Respondent No. 2 lodged a detailed complaint dated 03.04.2017 before the Crime Against Women ('CAW') Cell. The complaint contains allegations against Petitioner No. 1 of dowry demands and physical and mental cruelty. It is alleged, *inter alia*, that shortly after marriage Petitioner No. 1 demanded a sedan car; that Respondent No. 2 was subjected to physical cruelty when the demand was not met; and that her family thereafter arranged approximately Rs.6,00,000/- and paid the same to Petitioner No. 1. The complaint further

attributes to him repeated acts of physical assault, humiliation and demands for money during the period of cohabitation.

6. Insofar as Petitioner No. 2 is concerned, para 4 of the complaint contains a specific allegation that she had taken the jewellery articles of Respondent No. 2 from the inception of the marriage and retained the same with her. It is further alleged that whenever Respondent No. 2 demanded return of the jewellery, Petitioner No. 2 scolded and abused her. The complaint also states that a list of articles, jewellery, electronics, furniture, clothes and other valuables given at the time of marriage was annexed therewith.

7. Petitioner No. 1 and Respondent No. 2 continued to reside together until 30.10.2013. According to the complaint, Petitioner No. 1 thereafter left the matrimonial household and informed Respondent No. 2 that he did not wish to continue residing with her. Respondent No. 2 further alleged that she was left with only bare minimum household articles and that her stridhan, jewellery, valuables and other articles remained with her husband and mother-in-law and were not returned despite demands.

8. The complaint also records that, after the separation, Respondent No. 2 initially waited in the hope that Petitioner No. 1 would return and resume cohabitation. She thereafter approached the CAW Cell with the object of securing counselling and reconciliation. According to her, when repeated attempts at mediation failed and Petitioner No. 1 declined to resume cohabitation, she set out the allegations of cruelty and harassment in greater detail and sought legal action as well as return of her dowry articles, valuables, stridhan and gold ornaments.

9. The complaint culminated in registration of ***FIR No. 369/2017*** on

30.08.2017 at Police Station K.N. Katju Marg. Upon completion of investigation, a chargesheet was filed on 24.11.2017 against Petitioner Nos. 1 and 2, Vishal, the step-brother of Petitioner No. 1, and Shweta, his step-sister. The documents accompanying the final report included, *inter alia*, the complaint, the CAW Cell enquiry report, notice under Section 91 CrPC and the response thereto, a statement regarding bills, a statement regarding stridhan and statements recorded under Section 161 CrPC.

10. By order dated 24.11.2021, the learned MM found a *prima facie* case under Section 498A read with Section 34 IPC against all four accused persons. Insofar as the offence under Section 406 IPC was concerned, the learned MM specifically noticed the allegation that Petitioner No. 2 had taken the jewellery articles of Respondent No. 2 and had refused to return the same despite demand, and accordingly directed framing of a separate charge under Section 406 IPC against her.

11. The aforesaid order was challenged by all four accused persons in ***Criminal Revision No. 64/2022***. *Vide* order dated 20.05.2022, the learned ASJ noticed that Respondent No. 2 had been residing separately from Petitioner No. 2 and the other step-relatives since 2003. The allegations of cruelty against the step-relatives were found to be general in nature and Vishal and Shweta were accordingly discharged. The learned Revisional Court, however, sustained the charge under Section 498A IPC against Petitioner No. 1 and the charge under Section 406 IPC against Petitioner No. 2, the latter being founded upon the specific allegation concerning the jewellery of Respondent No. 2.

12. Aggrieved by the continuation of the aforesaid criminal proceedings, the Petitioners have approached this Court under Section 482 CrPC.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

13. Learned counsel for the Petitioners submits that continuation of the criminal proceedings amounts to an abuse of process. Qua Petitioner No. 2, it is urged that she admittedly ceased residing with Petitioner No. 1 and Respondent No. 2 in the year 2003 and never thereafter shared a household with them. The allegation of retention of stridhan, according to learned counsel, surfaced only in the complaint dated 03.04.2017, nearly fourteen years later. It is further submitted that no bills or receipts pertaining to the alleged jewellery were produced during investigation and that the material on record does not disclose any specific entrustment, demand or refusal so as to sustain an offence under Section 406 IPC.

14. Qua Petitioner No. 1, learned counsel submits that the parties have admittedly been residing separately since 30.10.2013, whereas the complaint was lodged only on 03.04.2017. It is, therefore, contended that the prosecution under Section 498A IPC is barred by Section 468 CrPC, the offence being punishable with imprisonment extending up to three years. According to learned counsel, this statutory bar was overlooked by both the learned Trial Court and the learned Revisional Court.

15. Learned counsel further relies upon para 34 of the complaint to submit that Respondent No. 2 had initially approached the CAW Cell with the object of reconciliation and to persuade Petitioner No. 1 to resume cohabitation. It is urged that the detailed allegations of cruelty were made only after the reconciliation efforts failed and Petitioner No. 1 declined to return to the matrimonial home. The criminal proceedings are, thus, stated to be a consequence of the failed matrimonial relationship rather than any contemporaneous grievance.

16. It is lastly submitted that the prolonged delay in initiating criminal proceedings materially undermines the allegations. Learned counsel emphasises that the learned Revisional Court itself discharged the step-brother and step-sister of Petitioner No. 1 and contends that Petitioner No. 2, who had admittedly been residing separately since 2003, ought also to have been discharged.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. *Per contra*, learned counsel for Respondent No. 2 submits that the Petitioners have already availed the remedy of revision against the order on charge and have partly succeeded therein. It is urged that the present petition, in substance, seeks a further reappraisal of the same material under Section 482 CrPC, despite the learned Revisional Court having examined the allegations qua each accused separately and discharged two of them. The grounds now urged by the Petitioners, according to Respondent No. 2, raise disputed questions which ought to be tested at trial.

18. Qua Petitioner No. 1, learned counsel submits that the complaint contains specific allegations of dowry demand and cruelty, including a demand for a sedan car, payment of approximately Rs. 6,00,000/- by the family of Respondent No. 2, a further demand of approximately Rs. 2,00,000/- after the parties shifted to rented accommodation, and repeated acts of physical and mental cruelty during the period of cohabitation. It is contended that the truth or otherwise of these allegations cannot be determined without evidence.

19. Qua Petitioner No. 2, learned counsel submits that the contention regarding absence of any allegation of stridhan is contrary to the complaint.

It is pointed out that para 4 specifically alleges that Petitioner No. 2 had taken the jewellery articles of Respondent No. 2 at the inception of marriage and retained them despite demands for their return. It is, therefore, submitted that the fact that Petitioner No. 2 had been residing separately since 2003 does not, by itself, negate the allegation of prior entrustment and subsequent non-return.

20. Learned counsel further submits that the plea of limitation cannot be determined merely by treating 30.10.2013 as the terminal date for all the allegations in the complaint. Reliance is placed on the averments concerning efforts at reconciliation, continued deprivation of stridhan and the alleged demand and refusal to return the jewellery. It is urged that the relevant dates and circumstances are matters of evidence and do not disclose an incontrovertible legal bar warranting quashing of the proceedings at this stage.

21. Learned APP for the State also opposes the petition. He prays that the petition be dismissed and the proceedings before the learned Trial Court be permitted to continue in accordance with law.

<u>FINDINGS AND ANALYSIS</u>

22. This Court has heard learned counsel for the parties and perused the record.

23. At the outset, the scope of interference under Section 482 CrPC needs to be borne in mind. The Petitioners had challenged the order on charge dated 24.11.2021 by invoking the revisional jurisdiction under Section 397 CrPC and had partly succeeded. In ***Rajinder Prasad v. Bashir, MANU/SC/0574/2001***, the Supreme Court, while referring to ***Krishnan v. Krishnaveni***, ***MANU/SC/0223/1997***, reiterated that though the power under Section 482 CrPC is wide, it is to be exercised "*sparingly and cautiously*",

particularly where revisional jurisdiction has already been invoked. Ordinarily, the inherent jurisdiction cannot be used to circumvent the bar against a second revision.

24. This does not mean that the jurisdiction under Section 482 CrPC stands completely excluded. In ***Amit Kapoor v. Ramesh Chander, MANU/SC/0746/2012***, the Supreme Court clarified that there is no absolute bar on exercise of the inherent power where an extraordinary situation or abuse of process is demonstrated. The limitation is one of judicial restraint. At the same time, while dealing with a challenge to an order framing charge, the Supreme Court cautioned:

> *"3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
>
> *xxx*
>
> *13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."*

25. Tested on the aforesaid principles, the order dated 20.05.2022 cannot be said to reflect a mechanical acceptance of the prosecution case against all the accused persons. The learned Revisional Court expressly noticed that Respondent No. 2 had been residing separately from the step-relatives since 2003. It thereafter examined the allegations qua the individual accused and recorded that the allegations under Section 498A IPC were principally

directed against Petitioner No. 1, whereas the allegations against the other relatives were general, save and except the allegation concerning jewellery against Petitioner No. 2. The relevant portion of the order reads as under:

> *"4. Heard. Admittedly, the complainant was residing separately from revisionists no. 2, 3 and 4 since 2003. Perusal of statement of complainant Chanchal dated 13/04/2017 reveals that allegations of offence u/s 498A IPC are mainly levelled against revisionist no.1 and merely general allegations are levelled against revisionist no.2, 3 & 4 except the 'fact that step mother-in-law i.e. Rani (revisionist-accused no.2 herein) took all jewellery articles from her and kept the same with her and as on date, the same are in her possession. At the most, prima facie offence u/s 498A IPC is made out against the husband (revisionist no.1-accused), whereas offence u/s 406 IPC is made out against the step mother-in-law i.e. Rani (revisionist no.2-accused). No offence is made out against revisionists accused no. 3 & 4 and as such they are discharged. Accordingly, the impugned order dated 24/11/2021 qua framing charge u/s 498A IPC against revisionist no.1-accused Rajesh Kumar and qua framing charge u/s 406 IPC against revisionist no.2-accused is upheld. The appeal is partly allowed. The same is disposed of accordingly."*

26. Insofar as Petitioner No. 1 is concerned, the complaint cannot, at this stage, be characterised as containing only vague or omnibus allegations. Respondent No. 2 has attributed specific acts to him, including a demand for a sedan car shortly after marriage, alleged physical assault in connection with the said demand, payment of approximately Rs. 6,00,000/- by her family and a further demand of approximately Rs.2,00,000/- after the parties shifted to rented accommodation. The complaint also narrates several instances of alleged physical and mental cruelty during the period when the spouses resided together.

27. Whether these allegations are true, whether they are exaggerated, or whether Respondent No. 2 would ultimately be able to prove them are matters for trial. At the stage of charge, this Court cannot test the probable defence against the prosecution version or undertake a comparative assessment of their respective credibility. As held in ***Amit Kapoor (supra)***, where a factual foundation for the offence exists, the Court ought not to marshal the material as if it were deciding the trial.

28. The principal challenge qua Petitioner No. 1, however, is founded on Section 468 CrPC. The submission is that Petitioner No. 1 admittedly started residing separately from Respondent No. 2 on 30.10.2013, whereas the complaint is dated 03.04.2017. Since Section 498A IPC is punishable with imprisonment extending up to three years, it is urged that the prosecution is barred by limitation.

29. The plea cannot be considered by reading Section 468 CrPC in isolation. Section 473 CrPC expressly provides an exception to the bar of limitation. The provision permits cognizance after expiry of the prescribed period where the delay has been properly explained or where the Court considers it necessary to do so in the interest of justice.

30. The interaction between Sections 468 and 473 CrPC, specifically in the context of Section 498A IPC, was examined by the Supreme Court in ***Vanka Radhamanohari v. Vanka Venkata Reddy, MANU/SC/0510/1993***. The Supreme Court held:

> *"5. …In view of Section 473 a Court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the Court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non*

obstante clause which means that said section has an overriding effect on Section 468, if the Court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice."

31. Importantly, ***Vanka Radhamanohari (supra)*** was itself a case where the High Court had treated the complaint under Section 498A IPC as barred under Section 468 CrPC. The Supreme Court reversed that conclusion and held that, having regard to the allegations of cruelty, the matter ought to proceed notwithstanding the plea of limitation.

32. In the present case, the complaint itself contains an explanation for the course adopted by Respondent No. 2 after the spouses separated. Para 34 records that she initially waited in the hope that Petitioner No. 1 would return and thereafter approached the CAW Cell for counselling and reconciliation. It further records that attempts at mediation did not succeed and that Petitioner No. 1 declined to resume cohabitation, whereafter the allegations were set out in detail and legal action was sought.

33. At this stage, this Court is not required to pronounce upon the correctness or sufficiency of the explanation offered by Respondent No. 2. However, once Section 473 CrPC and the circumstances pleaded in the complaint are taken into account, the date 30.10.2013 cannot, by itself, be treated as furnishing an incontrovertible legal bar warranting quashing of the prosecution. The plea under Section 468 CrPC, therefore, does not justify exercise of the inherent jurisdiction in favour of Petitioner No. 1.

34. It is clarified that the above conclusion does not proceed on the premise that every offence under Section 498A IPC is necessarily a continuing offence. The conclusion is narrower: the plea of limitation in the present case

cannot be decided solely by reference to the date of separation, without considering Section 473 CrPC and the circumstances pleaded by the complainant. This is precisely the caution underlying the decision in ***Vanka Radhamanohari (supra)***.

35. The challenge qua Petitioner No. 2 must be examined independently. Her principal defence is that she had been residing separately from the couple since the year 2003 and that the allegation relating to stridhan has surfaced only after about fourteen years. It is also urged that no bills or receipts concerning the jewellery were produced.

36. The submission that there is no specific allegation concerning stridhan against Petitioner No. 2 is, however, contrary to the complaint. Para 4 specifically states:

> *"4. That since beginning the mother-in-law of the complainant took all jewellery articles from complainant and kept the same with her since inception of the marriage and even as on date the same are in possession of mother-in-law and whenever the complainant demanded jewellery articles from mother-in-law she scolded the complainant and abused her in a filthy manner."*

37. The allegation is not confined to para 4. Para 29 again states that the stridhan, jewellery and other valuables of Respondent No. 2 were with the husband and mother-in-law and "*they are not returning the same even when specifically asked for*." Thus, for the limited purpose of examining whether a prima facie case exists, there is an express allegation both of entrustment and non-return.

38. In ***Rashmi Kumar v. Mahesh Kumar Bhada, MANU/SC/1052/1997***, the Supreme Court explained that where stridhan is entrusted to the husband or any other member of the family, dishonest misappropriation or use thereof

may attract Section 406 IPC. On the nature of entrustment, the Court observed:

> *"It is always a question of fact in each case as to how property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be."*

The Supreme Court further cautioned that, at the threshold, the Court is not to sift the defence material to determine whether the allegation of entrustment would ultimately stand proved.

39. Therefore, the fact that Petitioner No. 2 started residing separately from the couple in the year 2003 cannot, by itself, negate the allegation under Section 406 IPC. The case of Respondent No. 2 is that the jewellery had already been taken by Petitioner No. 2 at the inception of the marriage. The subsequent separate residence is certainly a circumstance which Petitioner No. 2 may rely upon in defence, but it does not make the allegation of prior entrustment inherently impossible.

40. The argument based upon the absence of bills also cannot result in quashing of the charge. The complaint itself states that a list of the articles, jewellery, electronics, furniture, clothes and other valuables given at the time of marriage was annexed therewith. The chargesheet also records a "Statement regarding bill" and a "Statement regarding Istridhan" amongst the

documents forming part of the final report. Whether the prosecution can ultimately establish ownership, identity and entrustment of the particular articles is a matter of proof. The absence of purchase bills, even if accepted at this stage, does not obliterate the specific allegations in the complaint.

41. The submission regarding the fourteen-year gap qua Petitioner No. 2 also cannot be considered divorced from the allegation of demand and refusal. In ***Rashmi Kumar (supra)***, while dealing with limitation for an offence under Section 406 IPC, the Supreme Court examined the pleaded demand for return of stridhan and the refusal thereof and held the complaint before it to be within limitation from the relevant demand and refusal.

42. In the present case, Respondent No. 2 has not pleaded that the only demand and refusal occurred in the year 2003. On the contrary, her case is that the jewellery continued to remain with Petitioner No. 2 and was not returned despite demands. The precise date of entrustment, the manner in which it was made, the demands for return and the alleged refusal are all matters which would require evidence. They cannot be conclusively determined merely from the fact that Petitioner No. 2 had ceased residing with the couple in 2003.

43. This Court also does not proceed on the basis that an offence under Section 406 IPC is invariably a continuing offence. In ***Rashmi Kumar (supra)***, after deciding the issue of limitation on the basis of demand and refusal, the Supreme Court expressly observed that the question whether the offence was a continuing one had lost relevance. It would, therefore, be incorrect to treat the decision as laying down an unqualified proposition that an offence under Section 406 IPC continues from day to day.

44. A similar approach was adopted by this Court in ***Praveen Mittal & Ors.***

v. State (NCT of Delhi) & Ors., MANU/DE/4831/2018, where the charge under Section 406 IPC against the parents-in-law was sustained upon allegations that the stridhan jewellery had been taken soon after marriage and had not been returned. The factual matrix there also involved subsequent conciliation proceedings and recoveries and is, therefore, not identical to the present case. The decision is relevant only to the limited principle that a specific allegation of taking and non-return of stridhan cannot be discarded at the stage of charge by undertaking an assessment of its ultimate evidentiary worth.

45. The contention that Respondent No. 2 approached the criminal justice system only after reconciliation failed also does not, at this stage, establish mala fides. Para 34 of the complaint itself records that her initial effort was to secure counselling and restoration of the matrimonial relationship. Whether this explanation is credible, or whether the complaint was instituted with an ulterior motive as alleged by the Petitioners, is a matter which can only be tested in evidence. The Court cannot return a finding of false implication merely because attempts at reconciliation preceded the detailed complaint.

46. The further submission regarding the independent income of Respondent No. 2 has no material bearing upon the offences which presently survive. Her earning capacity may be relevant in proceedings concerning maintenance; it does not, by itself, answer the allegations of cruelty under Section 498A IPC or entrustment and non-return of stridhan under Section 406 IPC.

47. Another circumstance which cannot be overlooked is that the learned Revisional Court did not permit the prosecution to continue indiscriminately against all members of the family. It accepted the plea of separate residence

while considering the general allegations against the step-brother and step-sister and discharged them. Petitioner No. 1 was retained in the proceedings on account of the specific allegations of cruelty attributed to him, while Petitioner No. 2 was retained only for the offence under Section 406 IPC on account of the specific allegation concerning jewellery. The order, therefore, reflects a segregation of the allegations qua each accused rather than a mechanical affirmation of the order on charge.

48. Ultimately, the grounds urged by the Petitioners would require this Court to decide whether the allegations of cruelty are truthful; whether jewellery was in fact entrusted to Petitioner No. 2; whether and when its return was demanded; whether there was a refusal; whether the delay stands satisfactorily explained; and whether the proceedings were motivated by the failure of reconciliation. These are matters which necessarily involve appreciation of evidence. Such an exercise cannot be undertaken while exercising jurisdiction under Section 482 CrPC, particularly when the order on charge has already undergone revisional scrutiny and the prosecution evidence has commenced.

CONCLUSION

49. In view of the above, this Court finds no patent illegality or such incontrovertible legal bar as would warrant quashing of the surviving proceedings against Petitioner No. 1 under Section 498A IPC or against Petitioner No. 2 under Section 406 IPC.

50. Accordingly, the present petition is dismissed. Pending application(s), if any stands disposed of.

51. It is clarified that the observations made herein are confined to the

adjudication of the present petition under Section 482 CrPC and are only *prima facie* in nature. The learned Trial Court shall decide the case on the evidence led before it, uninfluenced by any observation made in the present judgment.

MADHU JAIN
(JUDGE)

SEPTEMBER 02, 2026/m