

**In the Court of Sh. Ashwani Kumar Sarpal, Principal  
District & Sessions Judge, East District, Karkardooma  
Courts, Delhi.**

Sh. Upkar Joshi & Others

vs.

State & Another

(Crl. Rev. No. 145/2024)

Date of Institution: 9-7-2024

Date of Decision: 16-3-2026

**(Revision petition u/s 397 Cr.P.C. against order of charge  
dated 15-1-2024 and consequently framing of  
charge on 29-2-2024)**

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**ORDER:-**

- 1) As per case laws **State of Karnataka vs. L. Muniswamy (1977) 2 SCC 699, Supdt. & Remembrance of Legal vs. Anil Kumar Bhunja (1979) 4 SCC 274, State of MP vs. Mohanlal Soni (2000) 6 SCC 338, Kanti Bhadra Shah vs. State of West Bengal 2000 (1) SCC 722, Om Wati vs. State 2001 Crl. L. J. 1723, Palwinder Singh vs. Balvinder Singh (2009) 3 SCC 850, Sajjan Kumar vs. CBI (2010) 9 SCC 368, Sheoraj Singh Ahlawat vs. State of UP (2013) 11 SCC 476**, at the stage of framing of the charge, the court has to apply its mind to the question whether or not, there

is any ground for presuming the commission of offence by the accused and the court has to see as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. At this stage, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing of charge under Section 227 or 228 Cr.P.C. At the stage of framing of charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The charges can be framed on the basis of strong suspicion. Marshaling and appreciation of evidence is not in the domain of the court at that point of time. Magistrate is not required to analyze all the materials including pros and cons, reliability or acceptability etc. while framing of charge. It is at the trial, the court has to appreciate the evidentiary value, credibility or otherwise of the statements, veracity of various documents and then to take a decision one way or another. At the time of framing of charge, material brought by the prosecution on record must be believed to be true and its probative value cannot be decided at this stage. The accused is entitled to urge his contentions only on material submitted by the prosecution. He is not entitled to produce any of his material at this

stage and the court is not required to consider any such material, if submitted. Whether the prima facie case made out depends upon facts and circumstances of each case separately.

- 2) Three petitioners/accused persons namely Sh. Upkar Joshi, Dr. Saurabh Joshi and Smt. Rekha Joshi (who shall be referred as A-1, A-2 and A-3 respectively hereunder) filed this revision petition challenging the order on charge dated 15-1-2024 and consequentially the charge framed on 29-2-2024 against them by the Id. Trial Court in case FIR no. 133/2016 registered in police station Mayur Vihar u/s 406/498A/354/34 IPC. This case was registered on the basis of the written complaint dated 19-1-2015 given by Smt. Priyanka Pant (who shall be referred as complainant). A-1 was the husband, A-2 brother in law (Devar) and A-3 mother in law of the complainant. Ld. Trial Court framed charge under Section 498A/34 IPC against A-1, under Section 498A/354/34 IPC against A-2 and under Section 498A/406/34 IPC against A-3.
- 3) My Ld. Predecessor vide order dated 25-9-2024 condoned the delay in filing this revision petition. The matter was also referred to mediation for exploring the possibility of settlement but the same could not be compromised.
- 4) I have heard both the parties and gone through the record. In this revision petition, various case laws are cited by the accused persons and reproduced some paragraphs from the same but no copies of such case laws were produced.

However, it appears that accused persons infact picked up various case laws and apparently reproduced some paragraphs of different judgments including of foreign judgments just from judgment of Hon'ble Supreme Court in case **Achin Gupta vs. State of Haryana 2024 SCCOnline SC 759**.

- 5) Accused persons placed on record copy of the judgment dated 22-1-2021 passed by Id. Principal Judge Family Court by which A-1 was granted divorce from complainant on the ground of cruelty. Complainant challenged this judgment in the Hon'ble High Court in an appeal but it was dismissed on 29-7-2021. No further appeal was filed in Hon'ble Supreme Court by the complainant as informed. Thus, the divorce granted has become final between husband A-1 and wife complainant w.e.f. 22-1-2021 itself. Counsel for the accused persons referred to various paragraphs of the judgment dated 22-1-2021 which point out that infact complainant had treated her husband and her in-laws with cruelty. In para no. 145 of the judgment, it was also held that the allegations levelled by the complainant against her brother in law (A-2) regarding outraging her modesty etc. were prima facie not correct and the same were levelled to harass and humiliate him as well as to assassinate his character. The Hon'ble High Court order dated 29-7-2021 has confirmed the findings of the Id. Principal Judge Family Court that the husband and his family had suffered acute mental pain and agony and complainant left the matrimonial home in a planned

manner with the kids and all her essential belongings.

- 6) Counsel for the accused persons argued that the findings given by Id. Principal Judge Family Court are binding upon the criminal proceedings of the case and thus they are liable to be discharged. In this regard, accused persons referred the decision of the Hon'ble Supreme Court in case **Prem Raj vs. Poonamma Menon SLP (Crl.) No. 9778/2018 decided on 2-4-2024** in their revision petition but no copy of this judgment has been shown. However, I have gone through this judgment cited in 2024 SCC Online SC 483, wherein accused was convicted and sentenced to imprisonment and ordered to pay compensation under Section 138 of N.I. Act on basis of dishonour of cheque. Accused had filed a civil suit for declaration and injunction which was decreed in his favour and that decree was also upheld in an appeal. In that suit, accused had prayed that cheque in question be declared as a security cheque, defendants be directed to return the said cheque and they be restrained from taking any steps to encash the said cheque. The cheque in question was same in both civil suit and criminal proceedings under Section 138 of N.I. Act. Supreme Court held that except for the limited purpose of sentence or damages, the decision of civil court will not be binding upon the criminal court. Standard of proof required in the two proceedings are entirely different because civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof

beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of evidence adduced therein. There is no hard and fast rule but possibility of conflicting decisions of both civil and criminal proceedings is not a relevant consideration except for purpose of sentencing and imposition of damages. Accordingly, in the present matter, Supreme Court held that since the criminal court has imposed both sentence and damages upon the accused so criminal court shall be bound by the civil Court decree wherein it is held that cheque in question was issued only for the purposes of security and conviction of accused was set aside. This decision is not applicable in the present facts and circumstances.

- 7) The standard of proof in civil and criminal proceedings is totally different. The decision and finding given in divorce matter was based upon the prima facie view and probabilities whereas in the criminal case, the allegations are required to be proved beyond doubt by the prosecution. It is not necessary that the civil court decision is always binding upon the criminal case. The divorce case was decided on the basis of certain act and conduct of the complainant towards the accused persons. Number of facts and circumstances as mentioned in the complaint of complainant were not in issue for consideration in divorce case which are now required to be proved by her in the

criminal case. The divorce was granted on the basis of certain allegations made by the husband and the allegations of complainant wife were not directly to be determined. Hence, it is held that findings given in divorce case are not binding upon the criminal proceedings. Supreme Court in **Vishnu Dutt Sharma vs. Smt. Daya Sapra 2009 VII AD (SC) 721** held that both civil and criminal proceeding can run parallel but standard of proof in a criminal case vis-a-vis a civil case is different. In criminal case the prosecution is bound to prove the commission of offence beyond reasonable doubt but in a civil suit 'preponderance of probability' would serve the purpose for obtaining a decree. A judgment rendered in criminal proceedings would not make continuation of a civil proceeding an abuse of the process of the Court and finding in a criminal proceeding is not binding in civil proceeding. Civil case must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceedings. Principles of 'res-judicata' is not applicable in such situation. Hence, if this law laid down is applied, then the prima facie findings given in judgment of divorce case are not sufficient to discharge the accused persons from criminal matter as prosecution is required to be given an opportunity to prove its case.

- 8) It is also argued that the complaint dated 19-1-2015 filed by complainant with the police is consisting of 21 pages upon which FIR was registered and this is a typed

complaint which was got drafted from some legal mind to weed out loopholes or other deficiencies. Accused persons in their revision relied upon the decision of Hon'ble Supreme Court in case **Achin Gupta vs. State of Haryana 2024 INSC 369** but no copy of this judgment has been filed on record. However, I have gone through this judgment cited in 2024 SCC online SC 759 wherein chargesheet was quashed on the ground that allegations in the complaint were general, vague and sweeping with no instance of criminal conduct. There were no specific date, time and place of any incident mentioned in the complaint. Even police also found allegations against parents, brother and sister of husband as false. Further there was unexplained delay of about 2 years in filing the complaint from the date of institution of divorce case by husband and D.V. Act case by mother in law. This cited decision can be distinguished from facts and circumstances of the present matter and accused persons cannot be discharged.

- 9) No doubt, the complaint lodged by the complainant with the police is consisting of 21 pages but it cannot be said at this stage that the same was drafted by some legal expert. Complainant herself is well educated lady and is able to express her feelings and disclose the facts herself in her complaint without any help, so it cannot be ignored at this stage simple on the ground that it is a very long complaint. It is a matter of trial to find out whether any facts mentioned in the complaint are correct or incorrect and whether any help of legal expert was taken before

preparing this complaint or not.

- 10)** The accused persons levelled various types of allegations against complainant in different manners in the present revision petition and entirely blamed her for committing various illegal acts such as deserting the husband, showing disrespect to entire family, not taking care of the accused persons etc. It is also alleged that complainant had never entrusted any of her articles or jewellery to her mother in law A-3. It was also argued for accused persons that complainant left the matrimonial house in April, 2014 and A-1 filed divorce case on 23-12-2014 whereas the complaint was given on 20-1-2015 in CAW Cell by the complainant upon which the FIR was registered on 14-3-2016. Accused persons alleged that this FIR is a counter blast of the divorce case of A-1 and there is no explanation of such delay of lodging FIR which makes the case suspicious and this delay in registration of FIR is sufficient to discharge the accused persons. However, there is no delay in lodging the FIR because complaint was given within one month of filing of divorce case by the complainant in CAW cell. If the police had taken much time for registration of FIR, then complainant cannot be blamed for the same.
- 11)** Counsel for accused also stated that the marriage between A-1 and complainant took place on 30-4-2006 and as per the allegations of the complaint, act of misbehavior, physical cruelty and non return of dowry articles etc.

started in a short period after marriage but for the long about 9-10 years, no complaint was lodged to the police in this regard. There is no MLC of the complainant to show any physical assault committed upon her. In this regard, it has to be held that it is a judicial noticeable fact that the Indian woman generally tolerate the misbehavior, physical or mental cruelty and only in extreme circumstances approaches the police or court of law. In her complaint, complainant has mentioned certain instances of giving beatings to her and non approaching to the hospital or doctor for preparation of the MLC is not sufficient to reject her testimony. Generally Indian woman does not immediately approach to the doctor for her MLC and suffer some normal and minor beatings without any complaint. Accordingly, in absence of any MLC or medical documents to show the injury allegedly suffered by the complainant is not sufficient to discharge the accused persons.

- 12)** According to the accused persons, the allegations in the FIR are vague and general in nature without any specific instance and on the basis of such vague, unspecific and general allegations, charge cannot be framed. According to the accused persons, in whole of the complaint, there is no specific date and time mentioned and bald and baseless allegations are made against the accused persons without specifying any of their particular role. It is also argued that there is no independence public witness cited by the prosecution in the chargesheet and whatever witnesses are

cited, are interested and favourable witnesses being the relatives of the complainant. It is also stated that as per complaint, some incident had happened in presence of society members where house of accused was situated but those persons are not cited as a witness in the chargesheet. The accused persons allegedly had beaten one Mr. Sanjay Bhatt, the cousin brother of the complainant but neither his MLC is produced on record nor he is cited as a witness by the prosecution.

- 13) According to the accused persons, complainant has not issued any legal notice nor filed any civil suit against her husband or family members for recovery of any entrusted dowry articles nor any such recovery has taken place during investigation, so offence under Section 406 IPC is not made out. They denied making any demand of any dowry at any time. Even, there are no specific allegation regarding entrustment of any such article upon A-3 mother in law or dishonest misappropriation or conversion of those articles for own use by her. In this regard, reliance is placed on cases in the present revision petition titled as **Anu Gill vs. State II (2001) DMC 690 & Raj Kumar Khanna vs. State I (2002) DMC 200** but no copy of these case laws is shown during arguments nor filed it on record. However, I myself has searched these case laws. After going through the case Raj Kumar Khanna vs. State 2001 SCCOnline Del 1159, it can be found that there were only allegations of harassment to wife without any demand of dowry. High Court accordingly had quashed the

proceedings u/s 406 IPC. In case Anu Gill vs. State 2001 SCOnline Del 599 proceedings against sister in law u/s 406 IPC were quashed on the ground that there was no entrustment of dowry articles against her nor she was having any domain over the same. On the other hand, if the complaint of complainant dated 19-1-2015 is seen, then allegations of entrustment and non return of dowry items exists against A-3. Even complainant has filed list of dowry items along with the complaint, qua which criminal breach of trust was committed.

- 14)** According to the counsel, A-2 is a doctor and he has not committed any offence under Section 354 IPC against complainant and has been falsely implicated to put pressure upon A-1 in order to extort money from him. It is further stated that the incident of outraging of modesty allegedly committed by A-2 is not mentioned anywhere by father of the complainant in his statement u/s 161 Cr.P.C. On the other hand, it is argued that A-2 was tying Rakhi from the complainant and even in the judgment dated 22-1-2021, it is specifically held that the allegations levelled in this regard are untrue. However, if these allegations made in the complaint are taken into consideration, then prima facie case of misbehavior and attempt to outrage modesty of the complainant is made out. A-2 during trial can show that he had not done any such act and his intention in touching complainant on her waist and shoulders was not bad.

- 15) According to the counsel, the false complaint lodged by complainant is an abuse or misuse of process of law and simple matrimonial dispute between A-1 and complainant has been converted into a criminal proceeding which is nothing but a counter blast of the civil matter of divorce. No demand of dowry was made at any point of time by the accused persons nor any physical or mental cruelty was committed upon the complainant. The case has been instituted on the basis of vagueness, conjectures and surmises without any justified and legal ground and in this regard, counsel also relied upon the cases **Geeta Mehrotra vs. State of UP (2012) 10 SCC 741** and **G.V. Rao vs. L.H.V. Prasad (2000) 3 SCC 693** and some decisions of the foreign countries in revision petition but none of these case laws is placed on record. However, each case has to be decided on basis of its own facts and circumstances. In view of some specific allegations against accused persons in the complaint of complainant, it cannot be said that she had unnecessarily falsely implicated them in the case. The matter needs trial and without trial, no case is made out for discharge of the accused persons.
- 16) Accused persons denied giving of any beatings or physically assaulting the complainant and instead stated that the judgment of the Family Court clearly proves that infact she had committed physical and mental cruelty upon the accused persons. There was no demand of dowry made by the accused persons and there are certain contradiction in the statements of the complainant and her own father.

Counsel for the accused persons stated that when they can be discharged on the above grounds, then it is not necessary to face the trial only to prove their innocence. Thus, they have sought their discharge on the above mentioned grounds. Accused in their revision petition relied upon the judgment of Hon'ble Supreme Court in case **Arnesh Kumar vs. State of Bihar Crl. Appeal No. 1277/2014 decided on 2-7-2014, Preeti Gupta vs. State of Jharkhand 2010 (1) Crl. L. J. 4303 and Rajesh Sharma vs. State of UP 2017 SCC Online SC 821** but these case laws are not placed on record.

- 17) If the contents of the complaint dated 19-1-2015 upon which basis, FIR is registered are taken into consideration, then it can be said that certain specific instances with dates are also given when the complainant was subjected to mental cruelty and physical assault as well as she specifically narrated particulars words uttered by accused persons on some occasions. The allegations of demand of dowry, cash, car etc. also exists in this complaint made by accused persons especially by A-3 mother in law. Certain facts exist in the complaint when the dowry articles were retained by the accused persons and were not returned despite demands. Specific words with incidents can be found from the complaint when complainant was abused, threatened and beaten. There are statements of certain witnesses which shows that they had given cash amount which was spent at the time of the marriage. It is not always necessary that there should be independent

witnesses as certain things happens within the family and the witnesses from that family members can prove the allegations. It was a case of commission of cruelty and demand of dowry and if any separate incident had taken place with Sh. Sanjay Bhutt, the cousin brother of the complainant, then non examination of that witness is not sufficient to reject the case at all. Similarly, the non examination of some members of the residential society of the accused persons before whom some incident of cruelty had happened is not fatal to the prosecution case at this stage as she alone can also prove the said incident in her testimony. Certain allegations made in the complaint are disputed by the accused persons and whether the complainant is telling correct facts or not cannot be decided without proper trial. The allegations of non filing of any civil suit or non issuing of any notice for taking back the dowry articles by the complainant itself is not a ground to hold that there were no entrustment or misappropriations especially when complainant along with her complaint has annexed list of dowry articles given to the accused persons. It is not necessary that demand for return of dowry articles should be made only in writing and verbal demand is not sufficient to attract the offence under Section 406 IPC. One should not forget that except when some special or major event or incident happens, the date and time is remembered by human being otherwise no one note down daily date, time and place when any particular thing had happened or routine incident takes place. Hence, complainant cannot be faulted with if she

has not given date, time and place of each and every incident happened with her in her complaint and on this ground she cannot be disbelieved at this stage especially when some incident taken place with her is supported with exact date.

- 18)** Ld. Trial Court in the impugned order discussed the law laid down in cases Union of India vs. Prafulla Kumar Samal and Sajjan Kumar vs. CBI and then ordered for framing of charges. I am also of the view that there is a grave suspicion against the accused persons that they have committed offences and accordingly charges are correctly framed. Whether they can be convicted on the basis of evidence or not is a matter to be decided after trial and prosecution is required to be given an opportunity to prove its case beyond reasonable doubt. In view of the above, I find no ground to interfere in the orders of the Id. Trial Court, so the present revision petition is hereby dismissed. Accused persons especially A-3 who is an old mother in law of complainant can apply to the Id. Trial Court for their permanent exemption from personal appearance which can be decided by it as per law. Trial Court record with copy of this order be sent back and file be consigned to record room.

(Ashwani Kumar Sarpal)  
Principal District & Sessions Judge  
East District, KKD, Delhi/16-3-2026.