

IN THE COURT OF 4th ADDITIONAL SESSIONS JUDGE, SURAT

Cri. Revision Application No. 474/2025

Exh. _____

Applicant-

Ramibe Kashirambhai Chaudhari
Age-63, Occupation- Retired Servant
Residing at: A-4, Nand Banglow-1,
MG Road, Bardoli, Surat, Gujarat - 394601

V/s**Opponent-**

1. State of Gujarat
2. Adajan Police Station.

Sub:- Application under the provisions of Section 397 of The Code of Criminal Procedure,1973.

Appearance:-

Ld. advocate for the applicant:- Mr. Y. P. Tiwari
Ld. AGP for the opponent:- Mr. T. A. Pancholi

- JUDGMENT -

1. The present revision application has been preferred by the applicant accused against the opponent under the provision of section 397 of The Code of Criminal Provisions,1973 (hereinafter referred to as "**The Code**" for short) being aggrieved and dissatisfied with the order dated 06/08/2025 passed by the Ld. 5th Addl. Judicial Magistrate First Class, Surat (hereinafter referred to as "**The Id. Trial Court**" for short) below application at Exh.8 preferred by the applicant - accused in Criminal Case No.8460/2020, under the provision of section 239 of The Code, inter alia praying for discharging her from the charges leveled against her, whereby, The

ld. Trial Court was pleased to reject the application filed by the applicant - accused by observing that, there is prima facie material to frame charge against the applicant and therefore, the application filed by the applicant was disallowed. The facts leading the applicant accused to file this application are as follows.

2. It is contended by the accused that, the complainant has filed complaint against the accused for alleged commission of offenses punishable under the provision of section 498 (A), 323, 504, 506 (2) & 114 of The Indian Penal Code,1860 (hereunder referred as "**The IPC**" for short) and under the provision of section 3 and 7 of The Dowry Prohibition Act,1961, before the Police and thereafter, after registration of FIR and completion of investigation, the police has filed charge sheet against the accused, which has culminated in criminal case No.8460/2020.

Thereafter, process was issued to the accused, which was served upon her and in persuasion thereof, the accused has appeared before The ld. Trial Court and thereafter, the accused has filed an application Exh.8 inter alia praying for discharging her from the charges as there is no material to frame charge against the applicant accused. The said application came to be rejected by The ld. Trial Court and hence, the present revision application.

It is further contended that, order passed by The ld. Trial Court is arbitrary and against the principles of natural justice. It is also contended that, the act of rejection of the application by The ld. Trial Court was not proper and it appears that, injustice has been caused to the accused. It is further contended by the accused that, on perusal of the entire charge sheet, there appears no prima facie case against the applicant accused for framing of charge. It is further contended by

the accused that, only allegations made against the accused is regarding to the fact that, the applicant had phoned and threatened to the complainant and recorded the phone calls and the applicant had intervened in the life of the brother of the applicant and except this, there is no allegations. It is further contended by the accused that the applicant is resided at Bardoli and is posted in cottage Hospital Upleta i.e. 500 km away from the Surat, that how can it be possible to give colour of such serious allegations.

Therefore, the applicant accused could not be said to have played active role in the commission of the alleged crime. It is further contended that, the I. O. has wrongly arrested her and after perusal of the entire charge sheet, no prima facie material has been shown against her, which would be sufficient to frame charges, therefore impugned order passed by the Id. Trial Court is without application of mind and against the settled principle of law, which deserves to be set aside, hence present application.

3. This Court has issued notice to the opponent, which was duly served upon it and in pursuant to it, the opponent have appeared before this court through Ld. AGP.
4. Thereafter, the Id. Advocate for the applicant - accused has made his oral submissions. I have gone through the same.
5. The Id. A.G.P. for the opponent - State has made his oral submission by stating that, after through investigation, the investigating officer has filed charge sheet against the applicant for the alleged commission of offenses. Further, on perusal of the same, there appears prima facie material to frame charge against the applicant and therefore, The Id. Trial Court has not committed any error of law or fact and the same does not deserves to be interfered by this court

and as the revision application filed by the accused is devoid of any merits, deserves to be dismissed.

6. From the above stated facts, the following issues are arisen for just determination of the revision application.

Point for determination:-

1. Whether the order passed by The Id. Trial Court on 06/08/2025 below the application Exh.8 filed by the accused in criminal case No. 8460/2020 by rejecting the same, is illegal and required to be interfered with by this court?

2. What order ?

- 7 That, my findings to the above issues are as under.

Findings:-

1. In the affirmative.

2. As per final order.

- Reasons -

8. That, my reasons for the above stated findings are as follows.

The present application has been preferred by the accused under the provision of section 397 of The Code. Therefore, at this stage, it is imperative to know the scope and ambit of the power of this court under the said provision. At this stage, it would be profitable to rely and refer the principle laid down by **Hon'ble The Supreme Court** in the matter between **Amit Kapoor V/s Ramesh Chander, reported in 2012 (0) AIJEL-SC at page no. 52195**, more particularly at para 12, a relevant portion of which is reproduced hereunder.

12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not

specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

Thus, considering the aforesaid settled legal proposition, it transpires that, the jurisdiction of the Court under Section 397 of the code can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court and this court has very limited jurisdiction.

9. I have carefully gone through the rival submissions advanced by the ld. advocate for the parties, order passed by The ld. Trial Court, as well as documentary evidences produced on record. I have also gone through the judgments relied upon by the ld. advocate for the applicant. Considering the rival contentions of the respective parties, this court is of the view that there is not a single shred of the evidence against the accused, however importantly this Court has also held that in the event a suspicion arises against the accused, still the applicant would be discharged provided the suspicion is not a grave suspicion, therefore the applicant has to discharge because in the full charge sheet there is no evidence against the above said applicant or there is no independent witness nor any documentary evidence to show that the applicant is guilty in present case.

Upon consideration of the material on record, it appears that the allegations made in the complaint are general and omnibus in nature and no specific role or overt act has been attributed to the present applicant, the applicant, being a woman, is not ordinarily maintainable as a respondent under the Domestic Violence Act unless exceptional circumstances are made out and no prima facie

case is made out against the applicant to proceed further in the matter.

Further, Ld. advocate of the applicant has submitted Authorities in support of the arguments, which are as under:

1. Mange Ram Versus State Of Madhya Pradesh & Another, CRIMINAL APPEAL NO. OF 2025 (Arising out of Special Leave Petition (Criminal) No.10817 of 2024) (SC).
2. Kahkashan Kausar @ Sonam vs The State of Bihar, CRIMINAL APPEAL NO. 195 OF 2022 (arising out of S.L.P (Crl.) No. 6545 OF 2020) (SC).

This court has taken into consideration the Law laid down by the Honorable Apex Court in the case of {1} ***Mange Ram Versus State Of Madhya Pradesh & Another, CRIMINAL APPEAL NO. OF 2025 (Arising out of Special Leave Petition (Criminal) No.10817 of 2024) in para no.25.***

25. This Court, in Dara Lakshmi Narayana vs. State of Telangana, (2025) 3 SCC 735, has made it clear that family members of the husband ought not to be unnecessarily roped into criminal proceedings arising out of matrimonial discord. The Court observed that it has become a recurring tendency to implicate every member of the husband's family, irrespective of their role or actual involvement, merely because a dispute has arisen between the spouses. It was further held that where the allegations are bereft of specific particulars, and particularly where the relatives sought to be prosecuted are residing separately or have had no connection with the matrimonial home, allowing the prosecution to proceed would amount to an abuse of the process of law. The Court noted that criminal law is not to be deployed as an instrument of harassment, and that judicial scrutiny must be exercised to guard against such misuse.

{2} Kahkashan Kausar @ Sonam vs The State of Bihar, CRIMINAL APPEAL NO. 195 OF 2022 (arising out of S.L.P (Crl.) No. 6545 OF 2020)

13. This Court in its judgment in Rajesh Sharma and Ors. Vs. State of U.P. & Anr. 4, has observed:-

“14. Section 498-A was inserted in the statute with the laudable object of

punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

4. (2018) 10 SCC 472

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr. 5* , it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

15. Further in *Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 6* , it has also been observed:-

"32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. *The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their*

5. (2014) 8 SCC 273

6. (2010) 7 SCC 667

concurrence. The learned members of the Bar who belong to a noble profession

must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr. 7 , it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: “there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for

not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

17. Recently, in K. Subba Rao v. The State of Telangana 8 , it was also observed that:-

7. (2012) 10 SCC 741

8. (2018) 14 SCC 452

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

It is a settled principle of law that where no prima facie case is disclosed, continuation of proceedings would amount to abuse of process of law. Therefore, considering the facts and circumstances of the case and the principle laid down Hon'ble The Supreme Court in the aforesaid Citations, the applicant is required to be granted an opportunity for adducing evidence keeping in mind the larger object of fair trial and therefore, this court is of the view that, The Ld. Trial Court has failed to exercise the jurisdiction vested with it and therefore, the impugned order deserves to be set aside and in consequences therefore, the application of the applicant deserves consideration and hence, in the interest of justice, following order is passed.

- ORDER -

1. The revision application filed by the applicant is hereby allowed.
2. The impugned order dated 06/08/2025 passed by The Ld. Trial Court below application Exh. 8 in Criminal Case no. 8460 of 2020 is hereby quashed and set aside and hence, the present accused is hereby ordered to be discharged from the offense under Section-239 Cr.P.C.
3. The true copy of the order be sent to the Ld. Trial Court for necessary compliance at its end.

Pronounced in the open Court today on this 10rd day of April, 2026 under my hand and seal of this Court.

Place: Surat.

(Jayeshkumar Laxmanbhai Shrimali)
4th Addl. Sessions Judge, Surat.
(UID No.GJ00672)