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

Reserved on: 1st December, 2022
Pronounced on: 6th January, 2023

+ **CRL.M.C. 4449/2014**

RITU SETHI

..... Petitioner

Through: Ms. Manika Tripathy, Advocate

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Utkarsh, APP for State.
Mr. Varun Chandiok, Advocate
for Respondent Nos. 2 & 3.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present petition under Section 482 of the Criminal Procedure Code, 1973, seeks setting aside of the impugned order dated 10.05.2013, passed by Sh. Vinay Kumar Khanna, learned Additional Sessions Judge -04, South-East District, Saket Courts, Delhi in Criminal Revision No. 09 of 2013, titled Ritu Sethi Vs. State & Ors., dismissing the said revision petition. *Vide* the said revision petition, the petitioner had sought setting aside of order on charge, dated 10.03.2013, passed by the Court of learned Metropolitan Magistrate, South-East District, Saket Courts, Delhi; in case FIR No.36/2003 under Sections 498A/406/34 IPC, Police Station: Greater Kailash-I, whereby the

husband/respondent no. 3 was charged under Section 498-A IPC, whereas other accused persons namely Mrs. Suniti Sethi/mother-in-law and Ms. Mala Sethi/sister-in-law/respondent no. 2 were discharged for the offences under Sections 498A/406 IPC and the husband/respondent no. 3 was discharged for the offence under Section 406 IPC.

2. Brief factual background necessary for the disposal of the present petition is as under:

- i. Ms. Ritu Sethi (the petitioner) and Mr. Vivek Sethi (respondent no. 3) got married on 10.12.2001, in accordance with Hindu Rites and Ceremonies.
- ii. The petitioner filed a complaint dated 05.08.2002 at CWC Cell, Nanakpura, culminating into registration of FIR bearing No. 36/2003, under Section 498A/406/34 of the IPC at P.S. Greater Kailash-I on 27.02.2003.
- iii. Upon conclusion of the investigation, a chargesheet was filed before the Court of Learned Metropolitan Magistrate, who took cognizance of the same on 18.10.2003. The learned Metropolitan Magistrate *vide* order dated 10.01.2013, framed charges against the Mr. Vivek Sethi/respondent no. 3 under Section 498A of the IPC, while discharging the Mother-in-law & Sister-in-law of the petitioner, under Section 498A & 406 of the IPC. *Vide* the aforesaid order, the learned Metropolitan Magistrate also discharged Mr. Vivek Sethi/ respondent no. 3 for offence under Section 406 of the IPC.
- iv. The petitioner preferred a revision petition bearing no. 09/2013 against the aforesaid order on charge dated 10.01.2013, whereby,

the petitioner sought setting aside of the order discharging the mother-in-law and sister-in-law of the petitioner and the discharge of her husband, Mr. Vivek Sethi/respondent no. 3 under Section 406 of the IPC. The said revision petition was dismissed by the learned Additional Sessions Judge *vide* order dated 10.05.2013.

- v. The aforesaid order dated 10.05.2013 was challenged by the petitioner before this Court *vide* **CRL.M.C.4449/2014** (being disposed of by the present judgment).
- vi. During the pendency of the revision petition bearing no. 09/2013, the mother-in-law of the petitioner, i.e., Smt. Suniti Sethi passed away.
- vii. In the meantime, the trial *qua* the husband/Mr. Vivek Sethi for offence punishable under section 498A of the IPC continued and *vide* order dated 17.09.2016, Mr. Vivek Sethi, was acquitted for offence punishable under Section 498A IPC by Ms. Charu Gupta, learned Metropolitan Magistrate, Mahila Court, SED/Saket Courts, New Delhi. The said judgment of acquittal was challenged by the petitioner in CRL.A. 29/2016, before the learned District and Sessions Judge, South-East, Saket Courts, New Delhi. The said criminal appeal was dismissed *vide* order dated 21.02.2018 by Sh. Girish Kathpalia, District & Sessions Judge, South-East, Saket Courts, New Delhi. Aggrieved with the aforesaid judgment dated 20.01.2018, the petitioner preferred criminal revision petition being CRL.REV.P.471/2019 pending before this Court.
- viii. It is pertinent to mention that the connected matters, i.e., the present petition bearing no. CRL.M.C.4449/2014 and the revision

petition bearing no. CRL.REV.P.471/2019, arise out of two separate impugned judgments, dated 10.05.2013 and 17.09.2016 respectively, passed at two different stages of trial, therefore, the same are being disposed of by this court by two separate judgments of the same date.

3. The learned counsel for the respondents submits that the Petitioner has approached this Court by way of second revision petition under Section 482 of the Cr.P.C., after dismissal of first statutory revision petition under Section 397(3) and therefore the present petition is not maintainable. In furtherance of the same, the learned counsel relies on Rajan Kumar Manchanda Vs. State of Karnataka, 1990 (Supp) Supreme Court Cases 132, whereby it has been held as under:

“2. ...A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

The learned counsel for the respondent further relied on the judgments of this Court passed in Pooja Walia Vs. State & Anr (CRL.M.C. No. 1788/2011 dated 27.05.2011), Varinder Kaur Vs. The State (NCT of Delhi) & Anr. (CRL.M.C. No. 3931/2017 dated 21.09.2017), Surender Kumar Jain Vs. State, (CRL.M.C. No. 299/2008 dated 30.01.2022).

4. Furthermore, the learned counsel submits that the said petition was filed after the expiry of more than one and half years of passing of the impugned order and this Court has observed, in Rajesh Chetwal Vs. State (CRL.M.C. No. 1656/2011 dated 24.08.2011), that:

“15. ...As I have observed hereinabove that a revision against an order ought to be filed within a period of 90 days and the said period has been held by Orissa High Court to be reasonable and sufficient to invoke the revisionary power of a Court, then ordinarily the said period can also be said to be reasonable in normal circumstances while preferring a petition under Section 482 Cr.PC while as in the instant case, there is a lapse of almost two years without there being even an iota of averment in the petition as to what the petitioner was doing during these two years...”

5. In support of the maintainability of the petition, learned counsel for the petitioner relied upon the judgment of the Hon’ble Supreme Court of India, in Shakuntala Devi and Ors. Vs. Chamru Mahto and Ors., MANU/SC/0161/2009, and in particular on the following paragraphs;

‘16. He then submitted that the decision in Dayanand's case (supra) relied upon by Mr. Sanyal had, in fact, been overruled in Krishnan's case (supra) and hence, reliance upon the judgment in Dayanand's case could not be supported. Mr. Narendra Kumar urged that while considering its earlier decision in Dayanand's case, this Court in the latter case of Krishnan (supra) had also observed that despite the bar of Section 397(3) of the Code, the relief contemplated under Section 482 was still available, though it was required to be exercised sparingly. Mr. Narendra Kumar submitted that the High Court had rightly exercised its jurisdiction under Section 482 of the Code in order to do complete justice between the parties.

17. We have carefully considered the submissions made on behalf of the respective parties and we see no reason to take a stand which is different from the stand that was taken both in Dayanand's case (supra) and Krishnan's case(supra). It is well settled that the object of the introduction of Sub- section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under Sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us.'

6. In addition to the above, the learned counsel for the petitioner further relied upon the decision of the Hon'ble Supreme Court of India in 'Krishnan and Ors. Vs. Krishnaveni and Ors., MANU/SC/0223/1997, and in particular on the following paragraphs:

'7. It is seen that exercises of the revisional power by the high court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of judicial Magistrate are inferior criminal courts to the sessions judge. ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 And section 401 are required to be read together. section 397 gives powers to the High Court to call for the records as also suo motu power under section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine the Correctness, legality or propriety of any finding sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under section 401 of the Code. The revisional. power of the high Court merely conserves the power of the high Court to see that justice is done is accordance with the recognised

rules of criminal jurisprudence and that its subordinates courts do not exceed the jurisdiction or abuse the power vested in them under the code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted.

14. In view of the above discussion, we hold that through the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the

Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.'

7. The learned counsel appearing on behalf of the petitioner, on merits, further submits that the courts below have erred in not framing the charges against the respondent no. 2/ Ms. Mala Sethi, i.e., the sister-in-law of the petitioner, in much as, there was sufficient *prima facie* material on record to frame charge under Section 498A/406 IPC *qua* the respondent no. 2. Similarly, there was sufficient material on record to frame charges under Section 406 IPC *qua* respondent no. 3.

8. Learned counsel for the petitioner submits that there were specific allegations against the sister-in-law, i.e. respondent no. 2 & the mother-in-law, with respect to the aforesaid offences.

9. Per contra, the learned counsel for the respondent submitted that mere bald allegations do not justify framing of charges of such serious nature and relies upon Sushil Kumar Sharma Vs. Union of India (2005) 6 SCC 281.

10. Further, the learned counsel for the respondent submitted that the argument of the petitioner to the effect that offence under Section 406 IPC has been committed by the respondent herein, because she entrusted any *Stridhan* to the latter ought not to be accepted. In support of his contention, the learned counsel for the respondent has relied upon Ms. Anu Gill vs State & Anr. 92 (2001) DLT 179, wherein it has been held as under:

"6. ...In the absence of the allegation of entrustment, question of misappropriation or conversion to her use does not arise. Thus the most vital ingredient to constitute the offence under section 406 IPC is missing...

8. It has almost become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-laws' family either out of vengeance or to curl out appropriate settlement. Such a tendency ought to be deprecated.”

11. It is well settled principle of law that a second revision petition is not maintainable under section 397(3) of the Cr.P.C. and the scope of challenge of two concurrent findings under Section 482 of the Cr.P.C., is limited. The petitioner had to demonstrate that the concurrent findings of the courts below are perverse and are beyond the facts of the case. For this Court to exercise its inherent powers under Section 482 Cr.P.C. in interfering with the concurrent findings of the two Courts below, it has to be demonstrated that the illegality in the said orders go to the very root of the matter and therefore are not sustainable in law.

12. The finding with respect to the sister-in-law/respondent no. 2 in the order dated 10.01.2013, passed by the learned Metropolitan Magistrate is as under:

“Coming first to the allegations against sister in law (Nanad) Mala Sethi. In the main complaint dated 05.08.2022 it has only been mentioned that Mala Sethi criticized the complainant for bring “pathetic gifts” in the wedding, soon after the wedding and also said that the complainant was a disgrace to their family. Thereafter the only next instance involving her is the one which occurred allegedly after June, 2002. When this incident occur has not been mentioned but it has mentioned that it occurred after the accused Vivek Sethi i.e. the husband of the complainant had shifted to another portion of the matrimonial house. There is no averment regarding any kind of harassment between December, 2001 till after June, 2002 by accused Mala even though she is admittedly residing at the same house. Now lets examine the incident which occurred somewhere in between June, 2022 and August, 2002.

Now, this incident is allegedly only to the effect that Mala Sethi banged on the door of the portion where complainant was residing forcefully and thereafter she asked the complainant to spend the few days that she has

left in the house, with as little trouble as possible and thereafter twisted the arm of the complainant and pushed her against the wall. Beside this there is no other allegation against this accused. Now, there is not averment of any unlawful demand of dowry being raised by the accused. Even if it is believed that she indeed forcefully entered the portion of the complainant and twisted her arm, the said does not amount to cruelty in connection with demand of dowry. This is so as it is nowhere mentioned that while so twisting the arm of nay period soon before or soon thereafter Mala Sethi made any unlawful demand for money etc. or that she made it clear or gave any hint that she was twisting the said arm as dowry was not brought by the complainant or the demands were not met by the complainant.

Further, there is no averment regarding entrustment of 'stridhan' to this accused at any point of time when the complainant lived in her matrimonial house. In the statement of complainant u/s 161 Cr.P.C. she has only badly stated that she had demanded the return of her stridhan from her husband, mother in law and sister in law on many occasions but it has not been returned. This vague averment unsupported by any other statement is insufficient to been returned. This vague averment unsupported by any other statement is insufficient to establish entrustment of 'stridhan' and refusal upon demand by accused Mala Sethi. Thus, it is clear that even in the basis ingredients required for proceeding ahead qua this accused for offence u/s 498A as well as 406 IPC are not available. Thus, she is discharged of these offences."

13. As far as the discharge of the respondent no. 3, under section 406 of the IPC is concerned, the finding in the order dated 10.01.2013 passed by the learned Metropolitan Magistrate is as under:

"Coming now to the allegations u/s 406 IPC against this accused. Now whereas it was it is settled position of law that a husband is presumed to be having dominion over stridhan of his wife, however, it is not an irrebuttable presumption and facts of each have to be kept in mind before raising this presumption. The complainant in this case is a qualified working lady who was working with the Australian High Commission when she got married. She was a resident of Delhi at the time of her marriage and even her matrimonial house was in Delhi, therefore, the complainant was required to specifically mention that whether at any point of time she handed over her jewellery to her husband which she has not mentioned. Further, all the household articles which were allegedly given were kept in the matrimonial house and in the absence of

avermert to the contrary it is a natural presumption that they have been used by all including the complainant as they were lying in the house and were articles of daily utility. In such circumstances no entrustment to the husband can be presumed. Further, prior to approaching the police there is no demand made by the complainant from her husband seeking return of those articles, thus, neither entrustment, nor refusal to return are made out from the investigation are made out. Thus, the accused Vivek Sethi is discharged of the offence u/s 406 IPC.”

The aforesaid findings were upheld by the Revisional Court *vide* judgment dated 10.05.2013.

14. The learned counsel for the petitioner submits that the learned Metropolitan Magistrate has gone beyond the scope of the jurisdiction at the stage of charge and ought to have taken the statement of the petitioner at its face value without appreciating and weighing evidence, as has been done. The said contention of the learned counsel for the petitioner is unfounded, as the bare perusal of the findings reproduced hereinabove shows that the learned Metropolitan Magistrate has taken the statement on face value itself and has come to the finding that bare reading of the same does not make out a case for framing of charges under Section 498A/406 of the IPC against the respondent no. 2 and the mother-in-law and under Section 406 of the IPC against respondent no. 3.

15. The learned counsel for the petitioner has taken this Court through the record of the case, and this Court, after examining the same, does not find any grounds to interfere with the findings of the courts below. As observed above, the learned Metropolitan Magistrate has correctly appreciated the case of the prosecution as put forth in the chargesheet. Furthermore, the judgment of the Revisional Court endorsing the findings of the learned Metropolitan Magistrate is also well within the scope of the revisional jurisdiction that was

exercised. The learned Additional Sessions Judge in the impugned order dated 10.05.2013, recorded as under:

“9. I have perused the impugned order, Learned Trial Court has comprehended the allegations against each of the accused and in detail dealt with the allegations. To conclude, on sifting and weighing the material on record, this Court finds that there is no sufficient material on record to proceed further against accused persons, who have been discharged by the Learned Trial Court and a prima facie case u/s 406 IPC has not emerged against accused husband Vivek Sethi (R-3), therefore, this Court is of the opinion that the conclusion derived by the Learned Trial Court cannot be faulted as unreasonable or erroneous. This Court finds no infirmity or illegality in the impugned order, when material on record is perused as a whole. This revision petition being devoid of any merit is, therefore, dismissed. TCR be sent back alongwith copy of this order. Revision file be consigned to Record Room.”

16. This court does not find any infirmity or illegality in the aforesaid orders and accordingly, the present petition is dismissed and disposed of alongwith the pending application(s), if any.

**AMIT SHARMA
JUDGE**

JANUARY 6, 2023/bsr