

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. _____ OF 2009

[Arising out of Special Leave Petition (Crl.) Nos. 4125-4126 of 2008]

BHASKAR LAL SHARMA & ANR.

...APPELLANTS

Versus

MONICA

...RESPONDENT

JUDGMENT

S.B. SINHA, J:

Leave granted.

Respondent Monica married Vikas Sharma (Vikas), son of the appellants herein. Vikas was a divorcee. He obtained the decree of divorce on or about 8th July, 2003 passed by the Civil Court in Lubumbashi, Congo. He had two children born on 23rd April, 1999 and 8th July, 2000 respectively from his first wife.

Indisputably, Vikas as also the appellants are engaged in the family business of import and export of about 150 commodities. Vikas was the Managing Director of the family managed Company since 1994 having its operating business places at Delhi, Bangkok, Shanghai, Brussels, Johannesburg, Kinshasa, Lubumbashi, Uganda, etc. Vikas and the appellants ordinarily live in Congo. They have a residential house also at Lajpat Nagar, New Delhi.

Negotiation between Vikas and the respondent – Monica took place through an agency known as ‘Sycorian Matrimonial Services’. The marriage took place at Sanatan Dharam Mandir Hall, Delhi on 16.1.2004. It was also registered with the Registrar of Marriages, MB Road Saket, New Delhi on 22.1.2004. Immediately thereafter, i.e., on or about 25.1.2004, the couple left India and stayed in Johannesburg, South Africa for about 10 days. They thereafter left for Lubumbashi, Conga, Africa. They stayed there for 2 months in their matrimonial home. The relationship between the parties was cordial during that period.

Monica came back to India on 5.4.2004. She stayed at her matrimonial home at Lajpat Nagar, New Delhi till 10.5.2004 with the

appellants. She again left for Lubumbashi, Africa to join her husband. However, the relationship between the parties deteriorated thereafter. They came back to India on 21.5.2004. Monica allegedly took all her belongings from Congo including clothes and the jewelry which she had been carrying.

On or about 26.5.2004, Vikas and the respondent visited Dr. Nagpal, a psychiatrist at Vim Hans Hospital for consultation to ascertain the reason for the non-compatibility and discord between them. Dr. Nagpal advised them to make their matrimonial life successful.

Vikas left for Congo on 27.5.2004 hoping that Monica would change her mind in regard to the future of their marriage and they should take a decision in regard to her going back thereto later. She, however, for one reason or the other, went to her parent's house on 14.6.2004 and took all her belongings including the jewelry articles which she had been carrying.

Allegedly, during that period, appellant No.2 humiliated her by various acts to which we would advert to a little later.

It is borne out from the records that during this entire period including the period after she left her matrimonial home in June 2004, parties communicated with each other through e-mails.

Monica filed a complaint marked as Complaint No. 287/1A under Sections 498A, 406 and 34 of the Indian Penal Code (for short, “IPC”) against her husband Vikas and the appellants on 9.9.2004. On the same day, an application for grant of maintenance was also filed in the Court of learned Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi under Section 125 of the Code of Criminal Procedure (for short, “the Code”) claiming maintenance of a sum of Rs.2 lakhs per month as also an order of an interim maintenance of Rs.2 lakhs per month till the disposal of the case. She was examined by the learned Metropolitan Magistrate Patiala House, New Delhi on 30.11.2004. Evidences were recorded whereafter summons had been issued on 21.3.2005 by the learned Metropolitan Magistrate. Her application for grant of interim maintenance was also allowed by the learned Metropolitan Magistrate by an order dated 10.5.2005 and granted interim maintenance at the rate of Rs.5,000/- per month.

Non bailable warrants of arrest were also issued against the appellants as also Vikas on 29.6.2005.

The respondent being not satisfied with the quantum of maintenance as granted by way of an interim arrangement filed a Revision Application before the High Court marked as Criminal Revision No. 452 of 2005

seeking increase in the maintenance granted by the learned Metropolitan Magistrate. The High Court enhanced the amount of compensation of interim maintenance to Rs.50,000/- per month. The amount of maintenance has since been fixed at Rs.50,000/- per month by the said Court.

On or about 2.8.2005, appellants as also Vikas filed application marked as Criminal (Misc.) No. 3673-75 of 2005 under Section 482 of the Code before the Delhi High Court for quashing the order directing issuance of non-bailable warrants against them. The High Court by its order dated 8.8.2005 stayed the order issuing non-bailable warrants against the appellants with an undertaking that Vikas and appellants would appear before the learned Magistrate.

Appellants along with Vikas also filed an application marked as Criminal (Misc.) Main No. 4742 of 2005 under Section 482 of the Code for quashing of the summoning order dated 21.3.2005 passed by the learned Magistrate in Complaint No.287/1A summoning them for attending the trial court under Sections 498A, 406 and 34 of the IPC.

On 3.10.2005, appellants and their son came to India; they appeared before the learned Magistrate; they were admitted to bail.

The High Court by its order dated 4.10.2005 passed in Criminal Revision No. 452 of 2005 directed impounding of the passport of Vikas stating that the efforts were being made for reconciliation. Admittedly talks of reconciliation failed. The High Court modified the said finding stating that the marriage seems to have broken down irretrievably and directed return of the passport to him by an order dated 6.10.2005. Pursuant to the liberty granted by the High Court, appellants as also Vikas filed an application on 15.10.2005 for permission to go abroad, which was allowed subject to the condition that additional bank guarantees be furnished of Rs.1 lakh for each of the applicant.

Monica challenged the said order before the High Court which was dismissed by an order dated 18.10.2005.

On 21.11.2005, Monica filed a Criminal Complaint No.574/1 under Section 420 of the IPC against the appellants and Vikas inter alia alleging all material facts relating to the first marriage and divorce and in particular the fact that the first wife of Vikas in her divorce suit alleged acts of cruelty on the part of her husband had not been disclosed.

On 12.12.2005, Monica challenged the order of the Delhi High Court dated 18.10.2005 before this Court by way of Special Leave Petition (Criminal) No. 6015-6016 of 2005, which was dismissed by an order dated 12.12.2005.

Despite the same, Monica filed another petition before the High Court under Section 482 of the Code inter alia praying that the learned trial court may be directed not to release the passport of Vikas till the application filed by her under Section 340 of the Code is disposed off.

Another petition marked as Criminal Misc. (Main) No. 519 of 2006 was filed by her for a direction upon the learned trial court to dispose of the case filed by her under Sections 498A/406 IPC and 420 IPC within a time frame of about 3 months and the appellants as also Vikas be directed to submit all the papers relating to their properties in India before the learned trial court.

The High Court by its order dated 7.2.2006 dismissed the petition filed by the respondent with costs.

On 20.3.2006, the learned Metropolitan Magistrate, New Delhi took cognizance of the complaint No. 574/1 under Section 417/415 IPC as the allegations were not made out under Section 420.

On 27.3.2006, the order dated 7.2.2006 passed by the High court was challenged by the respondent before this Court by way of Special Leave Petition (Criminal) No.1220 of 2006, which was dismissed with a direction to the trial court to expedite the proceedings.

Indisputably for one reason or the other (appellants had given some explanation in this behalf in the Special Leave Petition) appellants having failed to attend the court of the learned Metropolitan Magistrate, Monica filed an application for attachment of the ancestral property of the first appellant. Interpol also was sounded. Orders were passed for attachment of the property in terms of Section 83 of the Code situated both at Delhi as also the ancestral house of the first appellant at Jaipur. Although the order of attachment so far as the Jaipur property is concerned is said to have been passed in terms of Section 83(4)(c) of the Code, Monica allegedly forged the said order to show that the order of attachment has been passed in terms of Section 83(4)(a) thereof.

Brother of the first appellant lodged a First Information Report (“FIR”) with Moti Dungri Police Station, Jaipur. We are, however, not concerned with the said case at present.

Indisputably on 17.11.2007, Monica filed a petition under Section 9 of the Hindu Marriage Act, 1955 seeking for restitution of conjugal rights marked as Case No. 683 of 2007, which is pending in the Court of learned Additional District Judge, Tis Hazari, New Delhi.

We may place on record that at the instance of Monica several attempts have been made for reconciliation of matrimonial dispute between her and Vikas.

We may also place on record that applications dated 9.5.2008 and 31.5.2008 respectively were also filed before this Court by the respondent for mediation

Chandan Sharma, another son of the appellants came from Hong Kong to India for that purpose. Monica, however, insisted that appellant No.1 himself should come to India before her husband Vikas comes, which was not acceptable to the appellants as the reconciliation of the disputes was to take place between Monica and her husband Vikas.

We may notice that even this Court in the transfer petition filed by Monica being Transfer Petition (Crl.) No. 258 of 2007 by its order dated 4.2.2008 impleaded Union of India through Ministry of External Affairs as a party and learned Additional Solicitor General appearing for Union of India made a statement before this Court on 11.4.2008 that Emergency Travel Documents would be made available to Vikas and upon his arrival a regular passport would be issued. Interpol/Ministry of External Affairs were directed not to enforce the Red Corner Notice against Vikas Sharma. Pursuant thereto Vikas traveled to India.

On 9.5.2008, Vikas appeared before this Court in Transfer Petition (Criminal) No. 258/2007 and this Court by an order dated 9.5.2008 directed the complainant and Vikas to report to the Senior Coordinator of the Mediation Cell at Tis Hazari Courts, Delhi to explore the possibilities of resolving/settlement of their matrimonial discord. Pursuant thereto the parties appeared before the learned Senior Mediator and the mediation processes were resorted to on day to day basis. Indisputably however, the said negotiation failed. The matter was listed before this Court on

11.6.2008. The parties were given an opportunity to reconcile their disputes.

However, they could not arrive at any settlement.

The High Court by reason of the impugned order dated 21.1.2008 dismissed the application for quashing the summoning order dated 21.3.2005 filed by the appellants herein, opining:

“14. In order to attract the offence under Section 498A it would have to be proved that the wife was subjected to cruelty which could include mental cruelty. Whether the conduct was such as to cause grave injury or danger to the mental health of the woman are all matters to be examined only after the detailed evidence is led by the prosecution. At this stage, when a prayer is made for quashing of the criminal proceedings, this Court is not expected to go through the pre-summoning evidence in great detail and determine whether in fact all the ingredients of the offence as set out under Section 498A are actually made out or not.

15. Likewise the submission of the petitioners regarding non-entrustment of property to them by the complainant for the purposes of attracting the offence under Sections 403 read with 406 IPC is without merit. It was attempted to be shown by learned counsel for the petitioner that there is no specific averment that property was entrusted by the complainant to either of these petitioners or that they had criminally misappropriated the same. This Court is unable to agree. The averments in paras 16, 24 and 29 of the complaint when read taken collectively do indicate that the property which belonged to the complainant was, according to the complainant, in the possession of the Petitioners and on demand they refused to return

such property. At this stage, in order to examine if the complaint makes out a prima facie case, it is not necessary to go into the fine details and determine whether what is stated in the complaint is true or not.

16. In this context the observations of the Supreme Court in *Rashmi Kumar v. Mahesh Kumar Bhada* (1997) 2 SCC 397 would be relevant. In that case while examining Section 406 in some detail, this Court observed as under (SCC p. 407): The expression entrustment carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general signifi- cance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”

Mr. Vikas Pahwa, the learned counsel appearing on behalf of the appellants urged that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that:

- i. the complaint petition even if given face value and taken to be correct in its entirety does not disclose commission of offences

either under Section 498A or Section 406 of the IPC so far as the appellants are concerned;

- ii. the order summoning the appellants passed by the learned Metropolitan Magistrate, New Delhi dated 21.3.2005 would categorically show that there has been a complete non-application of mind on the part of the learned Magistrate;
- iii. The High Court failed to consider the e-mails exchanged between the parties which were annexed to the complaint petition itself. Had the said e-mails been taken into consideration, it could have been shown that no allegation of dowry demand or misappropriation of her Streedhan had been made therein;
- iv. the complaint petition does not disclose that any dowry has been demanded by the appellants or any act on their part was likely to drive the woman to commit suicide; which are the requisite ingredients in regard to commission of an offence under Section 498A of the IPC.
- v. Only two purported instances have been given with regard to alleged commission of an offence against the appellant No.1

and so far as the appellant No.2 is concerned, the allegations are only general in nature.

- vi. The FIR in question and other spate of litigations started by Monica against her husband and her parents-in-law clearly show acts of mala fide on her part inasmuch as she not only filed the complaint petition in question but also filed an application for grant of maintenance, a complaint petition under Section 420 of the IPC wherein an order of summoning had been issued as also an application under Section 9 of the Hindu Marriage Act, 1955 for the purpose of harassing her in-laws but at the same time she had been asking for mediation of their matrimonial dispute.

Mrs. Vinay Malhotra, the mother of the respondent, on the other hand, urged that:

- i. the appellants had been harassing and torturing the respondent in a systematic and planned manner to break her marriage with their son so as to compel her to agree for a divorce on receiving some amount.

- ii. Stridhan was entrusted to the appellants/their son and non-return thereof had been used as a coercive method to meet the unlawful demand of extracting divorce by mutual consent
- iii. Appellants had been taking different stands at different time as although no statement has been made before the High Court that they had returned the stridhan to the respondent; such a stand has been taken for the first time in the Special Leave Petition.
- iv. the respondent in her testimony having stated that the appellants had refused to call their son to India and had refused to return the Stridhan unless the proposal for divorce by mutual consent was accepted by her, sufficiently established the offence against them.
- v. the appellants having admitted offering of money to the respondent for obtaining divorce by mutual consent must be held to be guilty of commission of offences.
- vi. the appellants having offered a sum of Rs.25 lakhs for divorce by mutual consent would clearly go to show their mind-set that

they have been considering the marriage only in monetary terms and not of any emotional values.

The Parliament by Act No. 46 of 1983 with a view to combat the menace of dowry deaths and harassment to woman at the hands of her husband or his relatives introduced Section 498A and Section 304B in the IPC.

Section 498A reads as under:

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

The ‘Explanation’ appended thereto defines cruelty to mean: (i) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman; or (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus, the essential ingredients of the aforementioned provisions are:

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
 - (i) any willful conduct as was likely to drive such woman:
 - a. to commit suicide;
 - b. cause grave injury or danger to her life, limb, either mental or physical;
 - (ii) harassment of such woman, (1) with a view to coerce her to meet unlawful demand for property or valuable security, (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,
 - (iii) woman was subjected to such cruelty by: (1) husband of that woman, or (2) any relative of the husband.

For constitution an offence under Section 498A of the IPC, therefore, the ingredients thereof must be held to be existing.

For proving the offence under Section 498A of the IPC, the complainant must make allegation of harassment to the extent so as to

coerce her to meet any unlawful demand of dowry, or any willful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. We do not find any such allegation has been made or otherwise can be found out so as to enable us to arrive at an opinion that the appellants prima facie have committed such an offence.

The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of Vikas were with Monica. Vikas affirmed an affidavit so as to enable Monica to apply for their passports. Vikas, therefore, wanted to have children with them.

Monica sent an e-mail on 5.6.2004 to his mother stating that Vikas sent an e-mail to her on 4.6.2004, which reads thus:

“My love bubbly.

Don't worry everything will be fine. I am very happy to have found a person like you, who loves durjaya and surya like me. Mona, pls. pray to Krishna to help me and help us to do the right thing. I want to change my life to better, I want to become a sincere devotee of the Lord, I never want to drink again, it puts me down. I want to pray regularly, we must organize our time together to pray to the lord, we must serve him together and

everything will be alright. Pls. try to go everyday to the temple and pray to the Lord for us and our children, don't worry all will be ok. I am sorry to have caused you so much pain, I will make it up to you, promise. I love you my dear, take care.

HARE KRISHNA

Baba.”

In an e-mail sent to everybody concerned explaining her behaviour vis-à-vis those of Vikas, she referred to even the e-mails which was sent by Vikas to her to his mother.

It is not possible for us to deal with the contents of the e-mails in great details but it is evident that the couple had developed incompatibility in respect of various aspects of life including the one as to whether Monica did a favour to Vikas by marrying him. They also include the children, her going out of the home without informing any senior member of the house, allegation of extra marital affairs against Vikas; her taking of detergent powder evidently to commit suicide; they had been staying in separate rooms, differences in respect of carrying of business, her becoming hysterical at some point of time. Vikas even thought that she had been trying to black-mail him by refusing to go back to India and threatening to commit suicide. The e-mails shows allegations, counter allegations and

explanations by Monica in relation thereto. In an e-mail dated 19.6.2004 by Vikas, it was stated:

“I have given a lot of thought to our situation and as you told me many times before and yesterday also, that may be it is better that we split, I think that yes it is better to do so. We both are not at all compatible to each other monica. And it is not a wise decision to live this kind of life. I am not interested to living 2 different lives in the same house as you had once commented, I think this was on our first flight to Dubai. Anyway Monica I don't want anymore of this and neither do you, we both have a lot of things we can do with our lives, and I want to carry on now.

I am also going to leave congo and go somewhere else, I am presently talking to dad about going on my own, but its not easy as I don't have any money and only dad can give me something to help me, anyway, congo is finished, I hate that place.

I am not blaming you for anything, but it is better that we part, you also know this is better, and better to swallow the pain now then live our lives like this.

I am sorry.

Vikas.”

In one of the e-mails Vinay Malhotra alleges humiliation by appellant No.2.

On 14.8.2004, Vikas writes to his father-in-law by e-mail, which reads

as under:

“I have never written nasty emails to your daughter, on the contrary I always respected her and sent her lovely and sometimes erotic emails to light up our love life. But her nagging and lies that she has kept on telling you have made it difficult for me to try to live with a person like her. Your daughter on many occasions threatened me by trying to suicide for example trying to jump out of a running car, drinking poisonous substance, breaking things in my house, etc. When she does not get her way she goes bizark. And not only with me but on several occasions she fought with my parents, this for me is difficult to accept. I have always been truthful to you and her, and if you think otherwise then do as you please. I am not interested in continuing my relationship with your daughter, this is how I feel and I believe that we would not be happy together.

I have already asked my parents to speak to you and do what has to be done in a civilized manner. If your daughter thinks that I have insulted her or hurt her in anyway then frankly she has some mental problem, I have done nothing wrong, if I had done so then why until last week she was so eager to come back to me, when I have told her already that I don't think we can live together. I will not be coming to India. I am too busy and I have asked my parents to settle this with you, please remember that if you try to throw dirt on me I will not stay put, I will protect my reputation. This can go as far as you want, I don't fear anything because I have nothing to fear.

I hope that you will do what is best for everyone, the ball in is your court.”

A counter allegation was made by Anil Malhotra to Vikas, which reads as under:

“After marriage things went well for sometime and then suddenly you started crying foul. You along with my daughter came back to India on 25th May 2004. You profusely apologized for treatment meted out to my daughter and reassured to behave in future and that you were a gentleman. You and my daughter stayed at your parents place during your India visit when things appeared to be falling in line. You left for Africa on 27th May 2004 leaving behind my daughter at your parental house so that she could spend sometime with your parents and then join you in South Africa after 10 days. After returning to Africa, for sometime you kept on sending apologetic emails to my daughter and then suddenly you told my daughter that you were tired of hearing trivial complaints against her from your mother. Thereafter, you started writing nasty emails to my daughter, which is to your knowledge.

The main purpose of my writing this email is to express that anything that has to be done should be done with a human face. For that matter you should come to India within a week's time.

Suggesting you to re introspect may be a futile exercise. Rest assured, we are capable of meeting any situation in dealing with a gentleman or a deceit.

May like to reply to this email.”

There are many more e-mails exchanged between the couple as also their parents. However, in none of them any allegation with regard to cruelty or breach of trust had been made. Such allegations are made for the first time in the complaint petition as also in the application for grant of maintenance.

Respondent, in her complaint petition, made the following allegations against the appellants, which we may notice:

Appellant No.1 SH. BHASKAR LAL SHARMA – FATHER IN LAW	Appellant No.2 SMT. VIJLA SHARMA – (MOTHER IN LAW)
1. He threatened the Complainant to finish her relationship with Mr. Vikas Sharma as she was trying to control their house, children and the business (page 57)	1. She sent only two unmarried girls for Shagun instead of seven (page 42)
2. He offered divorce by mutual consent on the payment of Rs.25 lacs as compensation. He also refused to return the clothes/jewelry unless the divorce by mutual consent is granted by the complainant (Page 63)	2. She said that she would like the function of Engagement Ceremony to be organized in a 5 Star Hotel (page 43)

	3. She also advised the respondents to hold the marriage ceremony at Iscon Temple (page 44)
	4. She also took all the gifts/cash given by the invitees/guests (page 46)
	5. She made complaints on trivial matters. She kicked the respondent with her leg and told that her mother is a liar (page 51)
	6. She poisoned the ears of her son (page 52).
	7. She gave two used lady suits of her daughter to the Complainant (page 57).
	8. She gave perpetual sermons to the Complainant (page 58)
	9. She told her son Vikas Sharma over phone that kids do not like anything prepared by the Complainant (page 59)
	10. She humiliated and harassed by

	repeatedly saying that her son would be divorced for the second time whereas the Complainant would be divorced for the first time.
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Ex facie no case has been made out under Section 498A of the IPC so far as the appellants are concerned.

The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498A of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A. Similarly her allegations that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498A. Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC.

The scope of the aforementioned provision came up for consideration in some of the decisions of this Court. We may notice a few.

In Noorjahan vs. State rep. by D.S.P., [(2008) 11 SCC 55], this Court

held:

“16. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman is required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”.

17. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Amendment) Act, 1983 (46 of 1983). As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.”

It was observed in the fact situation obtaining therein:

“18. So far as the present appellant is concerned, the evidence is inadequate to show that she was party to any demand for dowry. In fact, PW 1 stated that when she went to the place of her daughter the appellant was present along with A-1 and A-2. The said A-1 demanded jewels and presentation of Rs. 5000 for Ramzan. She accepted that she told A-1 and A-2 that she will send the same within a week. The next statement of this witness is very significant. She (the appellant) told that two months’ time will be sufficient for offering the presentation. In other words, she did not make any demand for dowry. That aspect has been accepted by PW 1. Significantly, this witness in her cross-examination had admitted that the appellant is residing at Coimbatore for the last 35 years. She has categorically admitted that while she went to the house of her daughter, she (the appellant) was not present. Therefore, there is no evidence to show that the appellant was either present when the demand was made or she herself made any demand.”

In Sushil Kumar Sharma vs. Union of India & Ors. [(2005) 6 SCC

281], this Court held:

“10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short “CrPC”) and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also this Court are well known. The parties have relied upon the decisions of this Court in State of Haryana vs. Bhajan Lal [1992 (Supp.) 1 SCC 335]. We may notice the categories 1, 3, 5 and 7 mentioned in Para 102 of the said decision, which are as under:

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

xxx xxx xxx

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

xxx xxx xxx

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

xxx xxx xxx

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

{See also Chunduru Siva Ram Krishna & Anr. vs. Peddi Ravindra Babu & Anr. [2009 (4) SCALE 685], Kailashi Bai vs. Aarti Arya & Anr. [2009 (7) SCALE 304]}

Does this case fall under any of the categories is the question.

Before however, we consider the necessary ingredients of the aforementioned dicta vis-à-vis the facts involved in the present case, we may also notice some other decisions of this Court.

In Onkar Nath Mishra & Ors. vs. State (NCT of Delhi) & Anr. [2008

(1) JCC 65], this Court opined as under:

“18. In the present case, from a plain reading of the complaint filed by the complainant on 8-11-1994, extracted above, it is clear that the facts mentioned in the complaint, taken on their face value, do not make out a prima facie case against the appellants for having dishonestly misappropriated the stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable under Section 406 IPC. It is manifestly clear from the afore extracted complaint as also the relevant portion of the charge-sheet that there is neither any allegation of entrustment of any kind of property by the complainant to the appellants nor its misappropriation by them. Furthermore, it is also noted in the charge-sheet itself that the complainant had refused to take articles back when this offer was made to her by the investigating officer. Therefore, in our opinion, the very prerequisite of entrustment of the property and its misappropriation by the appellants are lacking in the instant case. We have no hesitation in holding that the learned Additional Sessions Judge and the High Court erred in law in coming to the conclusion that a case for framing of charge under Section 406 IPC was made out.

19. As regards the applicability of Section 498-A IPC, in the complaint dated 8-11-1994 there is not

even a whisper of a wilful conduct of Appellants 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498-A read with Explanation thereto. The complaint refers to the talk the complainant purports to have had with her husband, Appellant 3, who is alleged to have told her to come to Bijnore if she apologises to his father; keeps him happy; obeys his sister and talks to her father (the complainant's) to give her Rs.50,000 and VCR and brings these articles to Bijnore. We are convinced that the allegation of misbehaviour on the part of Appellants 1 and 2 and the demand of Rs. 50,000 and VCR by them made by the complainant in her subsequent statement dated 4-4-1995, was an afterthought and not bona fide."

In Ramesh & Ors. vs. State of T.N. [(2005) 3 SCC 507], it was
opined:

"6. Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant Gowri Ramaswamy. Looking at the allegations in the FIR and the contents of charge-sheet, we hold that none of the alleged offences viz. Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time i.e. between March and October 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under Section 498-A or any other offence of which cognizance was taken. Certain acts of taunting and ill-treatment of the informant by her sister-in-law (the appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the FIR is that on some

occasions, she directed the complainant to wash WC and she used to abuse her and used to pass remarks such as “even if you have got much jewellery, you are our slave”. It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband’s relations as possible. Neither the FIR nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.”

In Chunduru Siva Ram Krishna & Anr. vs. Peddi Ravindra Babu &

Anr. [supra], it is stated:

“17. The aforesaid discussion clearly pin-point the legal position on the subject which is by now well settled. The principle that could be culled out is that when at an initial stage a prosecution is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint filed prima facie establish the offence. It is also for the court to take into consideration any special feature that may appear in a particular case while considering

whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose. The tests that are laid down in the case of Bhajan Lal (supra) are required to be applied very carefully and minutely when a prayer for quashing is laid down before the Court.”

In Devendra & Ors. vs. State of U.P. & Anr. [2009 (7) SCALE 613],

it has been held:

“26. There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.”

Reliance has been placed by Mr. Malhotra on the decision of this Court in Mahila Vinod Kumari vs. State of Madhya Pradesh [2008 (10) SCALE 97]. We are not concerned with the same as the same deals with the question of perjury.

The complainant further did not stop there but also filed a complaint petition that she was cheated as Vikas and his parents did not disclose about his marital state of affairs in regard to the first marriage and/or the decree of divorce obtained by him. We do not intend to make any comment with regard to the correctness or otherwise of the statements made therein as the matter is not before us.

We have, however, made note of the litigations filed between the parties in great detail. These litigations, if a holistic view is taken, depict a sad state of affairs, namely, that the respondent, on the one hand, intends to take all coercive measures to secure the presence of her husband and the appellants in India in various cases filed by her and, on the other hand, she had repeatedly been making attempts of conciliation. Endeavour/conciliations were made by the Delhi High Court as also this Court at various stages. The High Court, as indicated hereinbefore, in its order dated 6.10.2005 passed in Criminal Revision No. 452 of 2005 categorically held that the marriage has irretrievably broken down. Be that as it may, we are of the opinion that keeping in view the ingredients of the provisions of Sections 498A of the IPC, no case has been made out against the appellants herein.

We may now consider the question as to whether the complaint petition discloses any offence under Section 406 of the IPC.

At the outset, we may notice as to what is 'Streedhana'

In Rashmi Kumar (Smt.) vs. Mahesh Kumar Bhada [(1997) 2 SCC 397], the meaning of Stridhana has been taken from Mayne's Hindu Law & Usage (13th Edn.). It was opined:

"9. A woman's power of disposal, independent of her husband's control, is not confined to saudayika but extends to other properties as well. Devala says: "A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress...." In N.R. Raghavachariar's *Hindu Law — Principles and Precedents*, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with "Definition of Stridhana". In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at page 426, it is stated that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property,

whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.”

It was furthermore held:

“...The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit....”

The offence of criminal breach of trust as defined in Section 405 of the IPC may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it,

dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or willfully suffers any other person so to do.

The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period up to three years or with fine or with both, are:

(i) entrusting any person with property or with any dominion over property;

(ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust.

We have noticed heretofore that the correspondences exchanged between the spouses or by and between Vikas and his in-laws do not disclose any allegation which would amount to criminal misconduct on the part of the appellants.

With the aforementioned backdrop of events, we may now notice the allegations made in the complaint petition filed by the respondent against the appellants.

The only allegation which brings the case within the purview of Section 406 is that appellant No.2 had taken all the gifts/cash given by the invitees/guests. Technically, this allegation would attract the definition of breach of trust within the meaning of Section 405 of the IPC.

Entrustment of some properties and/or dominion over them, if any, therefore, is attributed only against the appellant No.2. Other allegations made against the appellants are general in nature.

Entrustment is said to have been made to the appellants and/or their son.

No definite case of entrustment of any property has been made against the appellant No.1.

He is only said to have given back to the complainant's parent the entire cloth and jewelry. No demand was made by the respondent.

Offering of Rs.25 lakhs for grant of divorce by mutual consent as compensation to the complainant, which is three times of the amount of the value of 'Streedhana' and/or amount spent by the complainant's father per se does not constitute any offence of Section 406 of the Code.

Any gift made to the bridegroom or his parents – whether in accordance with any custom or otherwise also would not constitute any offence under Section 406 of the Code.

In State of Punjab vs. Pritam Chand & Ors. [2009 (2) SCALE 457], it has been held:

“4. Section 406 IPC deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property or willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the trust.”

{See also Harmanpreet Singh Ahluwalia & Ors. vs. State of Punjab & Ors.[2009 (7) SCALE 85]}

We, therefore, are of the opinion that prima facie a case under Section 406 of the IPC has been made out only against appellant No.2.

Before parting, we may observe that courts at all levels have made endeavours to bring about a settlement between the parties. The High Court

in the earlier round of proceedings probably rightly observed that the marriage between the Monica and Vikas has irretrievably been broken down.

The appeals are allowed to the extent mentioned hereinabove.

The summoning order dated 21.3.2005 passed against the appellants except Appellant No.2 is set aside. It is clarified that the proceedings can continue only against the appellant No.2, that too in respect of Section 406 IPC only.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

NEW DELHI;
JULY 27, 2009