2026:DHC:7904

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21.08.2026
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\# **CNR No. DLHC010251092023**

\+ **CRL.M.C. 4517/2023 & CRL.M.A. 17279/2023**

[redacted] .....Petitioner

Through: Mr. Rajeev Sirohi and Mr. Puneet Narula, Advs.

versus

STATE & ANR. .....Respondents

Through: Mr. Manoj Pant, APP for State. Mr. Mahavir Sharma and Ms. Neha Bisht, Advs. for R2 with Respondent no.2-in-person. [Mb: 9811045665] ASI Surender Singh, PS Kirti Nagar

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'] seeking quashing of ***FIR No. 184/2019*** dated 23.06.2019, registered at Police Station Kirti Nagar, District West, Delhi for offences punishable under Sections 498A and 406 read with 34 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'], and all consequential proceedings emanating therefrom.

FACTS

2. Facts relevant for the disposal of the present petition are that the petitioner is a medical practitioner and a citizen of the United States of America, where he has been residing since 1995. The petitioner and respondent No. 2 were introduced to each other in April 2007 and their

marriage was solemnized on 16.10.2007 at Gurudwara Babe Ke, Shahbad Mohammadpur, near I.G.I. Airport, New Delhi. The marriage was registered on 11.01.2008 before the Sub-Registrar, Hindu Marriage, Sitarganj, District Udham Singh Nagar, Uttarakhand. Although the registration certificate records 02.01.2008 as the date of solemnization, the copy placed on record bears an annotation stating that the marriage was solemnized on 16.10.2007. No child was born from the wedlock. The petitioner thereafter returned to the United States, while respondent No. 2 continued to reside in India.

3. A spousal visa application was thereafter pursued to enable respondent No. 2 to join the petitioner in the United States. On 15.03.2010, the United States Embassy declined to issue the visa at that stage and called for further material concerning the relationship between the parties to the present petition. The visa record further includes a refusal worksheet dated 01.09.2010, which records the ineligibility of respondent No. 2 under the category 'Alien Smuggling'.

4. The petitioner thereafter, to challenge the concerned refusal, engaged Mr. Hardeep Rai, an immigration lawyer, in December 2010. By an email dated 28.03.2011, the said counsel forwarded a communication received from an email address in the name of Anna Dhillon and signed [redacted] stating that the sender was getting divorced. That she was not interested in travelling to the United States and sought return of her handwritten papers. The petitioner thereafter engaged another immigration lawyer, Ms. Evita Tolu, in September 2011 who by an email dated 04.05.2012, informed the petitioner that the complete visa record was awaited and that the matter could proceed if respondent No. 2 cooperated. No further progress was made in the visa process thereafter.

5. On 17.12.2013, the petitioner instituted annulment proceedings before the Circuit Court of Greene County, Missouri, Family Court. The decree records that respondent No. 2 was served by publication and did not enter appearance. *Vide* judgment and decree dated 15.01.2015, the said Court annulled the marriage on the ground of fraud after recording findings relating to respondent No. 2's criminal record and her inability to enter the United States.

6. The petitioner subsequently instituted a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 [hereinafter referred to as 'HMA'] before the learned Principal Judge, Family Courts, West District, Tis Hazari Courts, Delhi, which was registered as ***HMA No. 983/2018***. Notice in the aforesaid petition was issued on 14.03.2018 and *vide* order dated 29.01.2019, the said petition was disposed of as withdrawn.

7. On 05.02.2019, respondent No. 2 lodged ***Complaint No. 104/2019*** before the Crime Against Women Cell [CAW], West District. The complaint alleged matrimonial cruelty, demands for cash and a vehicle, a further demand of approximately Rs. 16-17 crores for purchase of land and establishment of a hospital, and non-return of jewellery stated to have been entrusted to the petitioner's sister-in-law[redacted]ollowing enquiry, ***FIR No. 184/2019*** was registered at Police Station Kirti Nagar, District West, Delhi on 23.06.2019 under Sections 498A and 406 read with section 34 of IPC.

8. During investigation, respondent No. 2's response to a notice under Section 91 of CrPC and the supporting documents furnished by her were taken on record. Thereafter, a notice under Section 41A of CrPC, requiring the petitioner to join the investigation on 04.05.2021, was sent to him via email. The petitioner responded to the notice by email but did not join the

investigation in person. Upon his failure to join the investigation, a further notice under Section 41A of CrPC was served upon him on 28.05.2021. Virenderjeet Bains, brother of the petitioner and [redacted]ife of Virenderjeet Bains joined the investigation on 10.06.2021.

9. Upon completion of the investigation, final report dated 14.04.2022 was filed before the learned Trial Court on 21.06.2022. The petitioner was sent for trial, without arrest, for offences under Sections 498A and 406 of the IP[redacted]as placed in Column No. 12 as a person not charge-sheeted and the investigation also recorded that no prima facie evidence of dowry demand was found against [redacted]nd [redacted]rother of the petitioner. The status report filed by the State records that charges had then not been framed.

10. Aggrieved by the aforesaid, the present petition was filed in which *vide* an order dated 06.07.2023, notice was issued to the State and respondent No. 2. The petitioner was thereafter exempted from personal appearance before the learned Trial Court through counsel, and the interim order was continued from time to time. Since the proceedings arose from a matrimonial dispute, this Court, *vide* order dated 22.03.2024, referred the parties to Samadhan, Delhi High Court Mediation and Conciliation Centre. The mediation ended as *"Not-Settled"* on 18.09.2024. Arguments were heard on 21.08.2026, whereupon the present judgment was reserved. As on the date of reservation of this judgment, the learned Trial Court had not taken cognizance of the offences arising from the subject FIR, and the matter remained at the stage of consideration of the charge-sheet. Consequently, no charge had been framed.

<u>SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER</u>

11. Learned counsel for the petitioner submits that the present FIR is an abuse of the process of law and was registered as a counterblast to the matrimonial proceedings instituted by the petitioner in India. It is submitted that the parties did not meet after December 2011 and that the last communication relied upon by respondent No. 2 is of January 2015, however, the complaint was made only in 2019 and the FIR came to be registered on 23.06.2019, after respondent No. 2 had received notice in the matrimonial proceedings instituted by the petitioner in India.

12. Learned counsel for the petitioner, on the aspect of limitation, submits, that the offences under Sections 498A and 406 of the IPC are punishable with imprisonment not exceeding three years and, therefore, attract the bar under Section 468 of the CrPC. It is contended that, even if the communication of January 2015 is treated as the last relevant event, the complaint was beyond the prescribed period.

13. The learned counsel with regards to the matrimonial status of the parties submits, that the marriage already stood annulled by the Circuit Court of Greene County, Missouri, Family Court, *vide* judgment and decree dated 15.01.2015. He submits that respondent No. 2 had received notice of the said proceedings in August 2014 but did not enter appearance. It is further submitted that fraud is also recognised as a ground for annulment under Section 12(1)(c) of the HMA. The learned counsel further submits that the subsequent petition under the HMA was instituted in India on erroneous legal advice regarding the recognition of the foreign decree. Therefore, it is contended, that the withdrawal of the said petition, does not affect the decree dated 15.01.2015.

14. Learned counsel further relies upon the circumstances surrounding the identity and visa record of respondent No. 2. It is submitted that respondent No. 2 was introduced to the petitioner a[redacted] whereas her official name was subsequently stated to b[redacted] and that the marriage registration certificate also recorded a date different from the date on which the marriage was solemnized which as per the learned counsel was done on the wishes of respondent no. 2. With regards to respondent no. 2's visa, attention of the Court is drawn to the entry of 'Alien Smuggling' in the visa record and to paragraph 6 of the reply filed by respondent No. 2, wherein she has stated, according to learned counsel, to have admitted that the parties had agreed to pursue a spousal visa and that the visa was rejected under the said entry, though she disputes its correctness and explains that her earlier passports and visas were handled by event organisers and promoters during her modelling career.

15. Learned counsel for the petitioner further submits that the petitioner engaged two immigration lawyers to challenge the visa refusal. Reliance is placed upon the contemporaneous communications, including the emails dated 28.03.2011 and 24.08.2011, to submit that respondent No. 2 had withdrawn from the visa proceedings and did not wish to travel to the United States. It is further submitted that the remittance of approximately Rs. 11 lakhs was made towards the legal expenses of the visa proceedings and that the communication from the second lawyer records that the matter could proceed with the cooperation of respondent No. 2. So, according to the learned counsel for the petitioner, these documents demonstrate the petitioner's intention to enable respondent No. 2 to join him in the United States and belie the contrary allegations made in the complaint.

16. Learned counsel for the petitioner lastly submits that the parties have remained separated for more than a decade and that the reference to mediation did not result in a settlement. That in view of the delay in initiating the criminal proceedings, the foreign decree and the contemporaneous communications relied upon by the petitioner, continuation of the proceedings will amount to an abuse of the process of this Court. That the petitioner, accordingly, prays that the FIR and the proceedings emanating therefrom be quashed.

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENT NO. 2

17. The learned counsel for respondent No. 2 opposes the petition and disputes the petitioner's account of the visa proceedings. It is submitted that respondent No. 2 had travelled abroad prior to the marriage and had been granted visas on earlier occasions as well. Learned counsel further denies any involvement on part of respondent no 2 in 'Alien Smuggling' and submits that the adverse entry in the visa record cannot be attributed to any deliberate act on her part.

18. Learned counsel for respondent no. 2 with respect to the decree of annulment of marriage between the parties to the present petition passed by the Missouri Court submits, that the existence of a foreign decree is no ground to quash the criminal proceedings arising from acts alleged to have been committed during the subsistence of the marriage. It is contended that the decisions relied upon by the petitioner do not advance his case and that the validity and effect of the foreign decree cannot conclude the allegations forming the subject matter of the concerned FIR.

19. The learned counsel on the aspect of delay, submits, that the complaint refers to an in-person incident during the petitioner's visit in the year 2012

and to communications and assurances extending up to January 2015. It is submitted that respondent no. 2 refrained from immediately initiating criminal proceedings as she continued to hope that the marriage would survive. It is further submitted that the complaint was made on 17.12.2018, however, on account of an objection concerning territorial jurisdiction, it was taken up by the concerned CAW on 05.02.2019. Therefore, the learned counsel contends, that the intervening period of approximately two months occurred at the level of the police authorities and not on account of any inaction on part of respondent No. 2.

20. Learned counsel for respondent no. 2 further submits that the allegations in the complaint are specific and not omnibus. Reference in this regard is made to the alleged acts of physical and sexual cruelty, the demand for an Innova vehicle, the demand of approximately Rs. 16-17 crores for purchase of land and establishment of a hospital, the payment of Rs. 7 lakhs stated to have been made to the petitioner's brother and the alleged retention of the jewellery of respondent No. 2. Reference is also made to the expenditure allegedly incurred by respondent No. 2 and her family towards the honeymoon, jewellery and the purchase of a vehicle for a family wedding.

21. The learned counsel further submits that the bank records, card statements, purchase documents and particulars of the concerned witnesses were furnished to the Investigating Officer [IO]. That the material was examined during investigation and the charge-sheet was thereafter filed against the petitioner.

22. The learned counsel, therefore, submits that the allegations cannot be termed vague merely because they are disputed by the petitioner and, accordingly, prays that the present petition be dismissed.

SUBMISSIONS ADVANCED IN REJOINDER ON BEHALF OF THE PETITIONER

23. In rejoinder, the learned counsel for the petitioner submits that the petitioner's case is founded upon contemporaneous documentary material and not upon a bare denial of the allegations. It is reiterated that two lawyers were engaged for the visa proceedings, that the communications relied upon show the unwillingness of respondent No. 2 to continue those proceedings or travel to the United States and that the vehicle referred to by respondent No. 2 is not shown to have been purchased in the name of the petitioner.

ANALYSIS AND FINDINGS

24. This Court has heard the learned counsels for both the parties and has perused the material placed on record.

25. The questions which arise for consideration of this Court are, first, whether the allegations levelled against the petitioner, taken at their face value, disclose a prima facie case against the petitioner for offences punishable under Sections 498A and 406 read with 34 of IPC, and second, whether the criminal proceedings emanating from the concerned FIR are liable to be quashed on the ground that cognizance thereof which has not been taken yet, can now not be taken, as such is now barred by limitation under Section 468 of CrPC.

26. The scope of the High Court's jurisdiction under Section 482 of CrPC and Article 226 of the Constitution of India to quash an FIR and the criminal proceedings emanating therefrom was examined by the Hon'ble Supreme Court in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401.*** It was held therein that although such power to quash an FIR at the very threshold of the criminal proceedings is wide, it must be exercised

sparingly and with circumspection, without undertaking an enquiry into the reliability of the allegations or interdicting proceedings where the FIR read at its face value, discloses the commission of a cognizable offence.

27. Where an accused seeks quashing on the strength of the material produced by him/her, the test is even more exacting. In ***Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330***, the Hon'ble Supreme Court examined the scope of High Court's inherent jurisdiction under Section 482 of CrPC to quash criminal proceedings at the pre-trial stage on the basis of material produced by the accused. It was held that such power may be exercised only where the material is of sterling and impeccable quality, conclusively rules out the allegations, is incapable of being justifiably refuted, and establishes that continuation of the proceedings would amount to an abuse of the process of Court.

28. A similar note of caution was expressed by the Hon'ble Supreme Court, specifically in the context of matrimonial offences, in ***Sanapareddy Maheedhar Seshagiri v. State of A.P., (2007) 13 SCC 165***. While the proceedings therein were quashed in view of the peculiar and substantially undisputed facts of that case, the Court explained the governing principles in the following terms:

> *"31…..**If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the***

> ***realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same.*** *However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC." [Emphasis supplied]*

29. Tested on the aforesaid principles, the complaint cannot be characterised as containing only vague or omnibus allegations against the petitioner. Respondent No. 2 has specifically alleged repeated insults and abuse, demands for an Innova vehicle and money, payment of Rs. 7 lakhs to the petitioner's brother, a demand of approximately Rs. 16–17 crores for the purchase of land for further establishment of a hospital for the petitioner and acts of physical and sexual cruelty. In particular, she has alleged, that during the petitioner's visit to Delhi in April 2012, he stayed at her Delhi residence for three to four days, reiterated the demand of Rs. 16–17 crores, and forced her to engage in unnatural sex against her wishes. She has further alleged that, in December 2012, while she and her mother were on a holiday in Malaysia and Singapore, the petitioner called and abused her when she stated that the money being demanded by the petitioner was not available.

30. The aforesaid allegations, when accepted at their face value for the limited purpose of the present proceedings, disclose a prima facie case of cruelty and harassment by the petitioner. Whether the alleged incidents occurred, whether the monetary transactions bore the character attributed to them, and whether respondent No. 2 would ultimately be able to prove the

allegations are all matters and questions of evidence which cannot be determined at this stage by preferring the petitioner's version over that of respondent No. 2.

31. The foreign decree, the visa record, and the communications with the immigration lawyers relied upon by the petitioner do not satisfy all the steps laid down in ***Rajiv Thapar v. Madan Lal Kapoor [supra]***. The said material may support the defence of the petitioner concerning the matrimonial relationship and the visa process but neither does it conclusively rule out the specific acts alleged to have occurred in India nor does it constitute material incapable of being justifiably refuted by respondent No. 2. The petitioner's assertion that the parties did not meet after December 2011 is directly disputed by the specific allegation concerning his visit to Delhi in April 2012. Resolution of that dispute would necessarily require an assessment of evidence, an exercise, impermissible under the jurisdiction currently invoked.

32. The next question for consideration of this Court is whether the bar against taking cognizance prescribed under Section 468 of CrPC is attracted in the present case, so as to warrant quashing of the concerned criminal proceedings.

33. Section 468 of CrPC, opens with the words *"Except as otherwise provided elsewhere in this Code"*, therefore, the bar contemplated thereunder cannot be examined in isolation and must be considered in conjunction with the other relevant provisions of Chapter XXXVI of the CrPC. Section 468 of the CrPC, to the extent relevant herein, reads as under:

> *"468. Bar to taking cognizance after lapse of the period of limitation.—(1)* ***<u>Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category</u>***

> ***<u>specified in sub-section (2), after the expiry of the period of limitation.</u>***
> ***<u>(2) The period of limitation shall be—</u>***
> *(a)six months, if the offence is punishable with fine only;*
> *(b)one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
> ***<u>(c)three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.</u>*"**
> *<u>[Emphasis supplied]</u>*

34. Now the offences under Sections 498A and 406 of IPC are punishable with imprisonment which may extend to three years and therefore the period of limitation applicable to the facts and circumstances of the present case will be the one prescribed under Section 468(2)(c) of CrPC which is, three years. Its computation requires determination of the date on which limitation commenced and the date relevant for institution of the prosecution.

35. Section 469 of CrPC provides that, where the commission of the offence and the identity of the offender are known, limitation commences on the date of the offence. In the case of a continuing offence, Section 472 of CrPC provides a fresh commencement point for the period of limitation at every moment during which the offence continues.

36. In ***Arun Vyas v. Anita Vyas, (1999) 4 SCC 690***, the Hon'ble Supreme Court held that the essence of the offence under Section 498A of IPC is cruelty and that it constitutes a continuing offence. That each occasion on which the woman is subjected to cruelty gives rise to a fresh starting point of limitation and where no subsequent act of cruelty is alleged, the period of limitation is to be computed from the date of the last alleged act of cruelty.

37. Applying the aforesaid, the complaint in the present case does not specify the exact date of the alleged incidents in April 2012 or December

2012. April 2012 is stated to be the month of the last in-person act of cruelty and December 2012, the month of the last abusive phone call. The communications dated 12-13.12.2014 and 04.01.2015 are described as an apology and an assurance of reconciliation. They have not been alleged to constitute as independent acts of cruelty and therefore, do not furnish a fresh starting point under Sections 469 or 472 of CrPC.

38. The enquiry must now, next turn to the date relevant for computing the point where the prescribed period of limitation would end. The governing principle in this regard was laid down by a Constitution Bench of the Supreme Court in ***Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62***. The relevant portion of the aforesaid judgment reads as under:

> *"51. In view of the above, we hold that **for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance**…."*
> *[Emphasis supplied]*

39. For the purposes of Section 468 of CrPC, the relevant date is, therefore, the date on which the complaint was filed or the prosecution was instituted, and not a subsequent date on which the Magistrate takes cognizance or applies his/her judicial mind.

40. This very same principle was reiterated by the Hon'ble Supreme Court recently in ***Roma Ahuja v. State, 2026 SCC OnLine SC 557***, including in the context of a police case wherein the Apex Court held that for the purpose of computing limitation under Section 468 of CrPC, the relevant date is the date of initiation of criminal proceedings, namely, the date of filing of the complaint before the Magistrate or the date of lodging of the FIR before the

police, as the case may be, and not the date on which the Magistrate takes cognizance.

41. Respondent No. 2 in the present case, asserts that she first submitted her complaint to the police on 17.12.2018, that ***Complaint No. 104/2019*** was received by the concerned CAW Cell on 05.02.2019 after an objection concerning territorial jurisdiction, and that the subject-FIR was registered on 23.06.2019.

42. So, even if December 2012 is provisionally treated as the month of the last alleged act of cruelty, a bare calendar computation would show that the interval between that point and each of the asserted dates of institution of complaints before the concerned authorities, i.e. 17.12.2018, 05.02.2019 and 23.06.2019, exceeds the prescribed period of three years. This calculation is not however conclusive, because the exclusions and extension contemplated by Sections 470 and 473 of the CrPC also form part of the same statutory scheme as section 468 of CrPC.

43. The first qualification is contained in Section 470(4)(a) of CrPC, which requires the exclusion of that period during which the offender remained absent from India. It only operates upon the fact of absence from India and does not require such absence to amount to absconding which forms the subject matter of 470(4)(b), which is not relevant for the purposes of the present case. The relevant portion of the aforesaid provision reads as under:

> *"470. Exclusion of time in certain cases.—…*
> *(4)In computing the period of limitation, the time during which the offender—*
> ***(a)has been absent from India or from any territory outside India which is under the administration of the Central Government****,…*
> ***shall be excluded."*** *[Emphasis supplied]*

44. Based on the above, the petitioner states that he is a citizen of the United States of America, has resided there since 1995 and did not meet respondent No. 2 after December 2011. The record further shows that notices under Section 41A of CrPC were sent to him via email in May 2021 and that he did not join the investigation in person. These circumstances make Section 470(4)(a) of CrPC directly relevant. The paper book, however, does not contain a complete passport, immigration or entry and exit record from which the periods of his presence in, and absence from, India may be ascertained.

45. The petitioner seeks quashing on the ground of a complete legal bar, and must therefore establish, that the bar is apparent on the face of the record or apparent from admitted or unimpeachable material. In the absence of a complete travel record, a conclusive day-to-day computation cannot be made in his favour. The periods of absence, if any, must therefore, be determined from the appropriate official record by the Court which will consider the plea of limitation.

46. Moving forward, section 473 of CrPC also permits cognizance even after expiry of the prescribed period of limitation under section 468 of CrPC where the delay has been properly explained or where the Court considers it necessary to do so in the interests of justice. The provision reads as under:

> *"473. Extension of period of limitation in certain cases.—Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."*

47. The interaction between Sections 468 and 473 of CrPC, specifically in the context of Section 498A of IPC, was considered by the Supreme Court in

Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4. The relevant portion reads as under:

> *"5. … In view of Section 473 a court can take cognizance of an offence not only when it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained, but even in absence of proper explanation if the court is satisfied that it is necessary so to do in the interests of justice. The said Section 473 has a non-obstante clause which means that said section has an overriding effect on Section 468, if the court is satisfied on the facts and in the circumstances of a particular case, that either the delay has been properly explained or that it is necessary to do so in the interests of justice."*

48. The same principle was explained in greater detail in ***Arun Vyas v. Anita Vyas [supra]*** as follows:

> *"14. It may be noted here that Section 473 CrPC which extends the period of limitation is in two parts.* ***The first part contains a non obstante clause and gives overriding effect to that section over Sections 468 to 472. The second part has two limbs. The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice.*** *It is true that the expression "in the interest of justice" in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'.* ***The interest of justice demands that***

> ***<u>the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice</u>*.....”[Emphasis supplied]*

49. Applying the law discussed above, respondent No. 2 in the present case attributes the delay questioned by the petitioner, to her continuing hope that the marriage would survive and relies upon the apology stated to have been made on 12-13.12.2014 and the assurance of reconciliation stated to have been given on 04.01.2015. Stating again, these communications do not postpone the date of the last alleged act of cruelty, however, they are relevant to the explanation offered for the course adopted by respondent No. 2 and to the consideration required under Section 473 of CrPC. This Court is neither condoning the delay nor recording a final finding upon that explanation. The limited conclusion is that the circumstances pleaded require judicial consideration and prevent Section 468 of the CrPC from operating as an automatic ground for quashing of FIR in the present proceedings.

50. ***Sanapareddy Maheedhar Seshagiri v. State of A.P. [supra]*** also concerned allegations under Sections 498A and 406 of IPC against a husband residing in the United States. After considering Sections 468 to 473 of CrPC, the Supreme Court held, that in matrimonial offences, the nature of the allegations, the time taken in investigation and the power under Section 473 of CrPC must be considered before a prosecution is quashed on the ground of limitation. The ultimate quashing in this case turned upon its exceptional

facts, including an earlier order of a Coordinate Bench which had attained finality, the complainant's remarriage, return of the jewellery and the prolonged lapse of time. The decision does not lay down that every delayed matrimonial complaint is liable to be quashed.

51. The ingredients of the offence punishable under Section 406 of IPC, however, require independent consideration. Section 406 of IPC prescribes punishment for criminal breach of trust, as defined in Section 405 of IPC. The prosecution material must disclose, first, entrustment of property to the accused or dominion of the accused over such property and, second, dishonest misappropriation, conversion, use or disposal of that property, or the wilful suffering of another person to do so, in violation of a direction of law or a legal contract governing the trust. Both elements must relate to the person sought to be prosecuted.

52. The essential ingredients of the offence were restated by the Supreme Court in ***Abhishek Saxena v. State of U.P., 2023 SCC OnLine SC 1711.*** The portion, being directly relevant, reads as under:

> *"13. Now, we will consider the accusation of commission of offence under Section 406, IPC. The essential ingredients to constitute an offence under Section 406, IPC are as follows:*
> *(i) Entrusting any person with property or with any dominion over property;*
> *(ii) the person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation -*
> *(i) of any direction of law prescribing the mode in which such trust is to be discharge, or;*
> *(ii) of any legal contract made touching the discharge of such trust."*

53. When the complaint is tested against these ingredients, the foundational allegation of entrustment to the petitioner is absent. The complaint specifically states that respondent No. 2 handed over the jewellery to the petitioner's sister-in-law, [redacted], for being kept in her locker and that the articles continued to remain with her. It does not state that those articles were thereafter handed over to the petitioner or came under his dominion or control. Nor does it identify any demand for their return made to the petitioner followed by a refusal, conversion or disposal by him with dishonest intent.

54. Even the final report does not cure this defect. Although it sends the petitioner for trial under Sections 498A and 406 of IPC, its narrative records the allegation that the jewellery was in the possession o[redacted]he has been placed in Column No. 12 of the charge-sheet, with the investigating agency recording that no evidence was found against her. The table concerning the property or articles recovered, seized and relied upon does not identify any such article. The circumstance that the petitioner did not join the investigation in person cannot, by itself, supply the missing ingredients of entrustment, dominion or dishonest misappropriation.

55. The separate averments that jewellery or other articles were purchased and that particular items were given to the petitioner as gifts do not, without an allegation that respondent No. 2 retained ownership and placed those items with him in trust, satisfy the requirement of entrustment under Section 405 of IPC. Likewise, Section 34 of IPC is not a substantive offence and does not dispense with proof of the foundational facts constituting criminal breach of trust. In the absence of any allegation or material showing a common intention between the petitioner and [redacted]lation to the alleged retention or misappropriation of the jewellery, her alleged custody cannot be imputed to

the petitioner merely because of the matrimonial relationship between the parties.

56. A Division Bench of this Court dealt with a closely analogous situation in ***Raj Kumar Khanna v. State (NCT of Delhi), 2001 SCC OnLine Del 1159***. The prosecution there was also under Sections 498A and 406 read with section 34 of IPC. Finding no entrustment to the petitioner, the Court quashed the FIR and the consequential proceedings under Section 406 of IPC while declining to quash the prosecution under Section 498A of IPC. The relevant portion of the aforesaid judgment being directly relevant, reads as under:

> *"29.* ***Admittedly neither the complaint nor the supplementary statement show any entrustment of any property to the petitioner. In the absence of entrustment question of criminal breach does not arise Since there was no entrustment of any articles to the petitioner, therefore chances of ultimate conviction on this count are bleak. No useful purpose is going to be served by allowing the proceedings under Section 406, IPG to continue against this petitioner****…..*
> *30….For the foregoing reasons we hold that no offence under Section 406, IPC in the facts of this case qua the petitioner* prima facie *has been made out.* ***Accordingly FIR and proceedings emanating therefrom under Section 406, IPC are ordered to be quashed. But at this stage we are not inclined to quash the FIR under Section 498A, IPC It would be for the trial court to consider whether charge is made out or not?****"*
> *[Emphasis supplied]*

57. The principle emerging from the aforesaid decision is that a general allegation of non-return of stridhan cannot sustain a prosecution under Section 406 of IPC against every member of the matrimonial family. The complaint and the charge-sheet must disclose the entrustment or dominion attributed to

the particular accused and the subsequent dishonest dealing with the entrusted property. Even if the prosecution material is accepted in its entirety, those facts are not disclosed qua the petitioner in the present case. Permitting the charge under Section 406 of IPC to continue against him would, therefore, amount to an abuse of the process of Court.

58. The fact that the allegations under Section 498A of IPC survive does not preclude the Court from quashing the prosecution for the offence under Section 406 of IPC. The permissibility of offence-wise or partial quashing was authoritatively settled by the Supreme Court in ***Ishwar Pratap Singh v. State of U.P., (2018) 13 SCC 612***. The relevant portion extracted, reads as under:

> *"9. **Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part.** A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. **Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice.** A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. **There is no requirement that the charge-sheet***

> ***<u>has to be quashed as a whole and not in part</u>***. *Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed.” [Emphasis supplied]*

59. The same course was adopted in ***Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710***, where the prosecution under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was quashed while the prosecution under the remaining offences of IPC were permitted to continue. The Hon'ble Supreme Court in this case reiterated the principle settled in ***Ishwar Pratap Singh v. State of U.P. [supra]*** stating that the High Courts can in exercise of their power under section 482 of CrPC quash a chargesheet in part. In ***Arun Singh v. State of U.P., (2020) 3 SCC 736***, the prosecution under Section 493 of IPC was similarly quashed while that under Sections 3 and 4 of the Dowry Prohibition Act, 1961 was retained. The governing enquiry is thus offence-specific that whether the allegations, taken at their face value, disclose the ingredients of the particular offence sought to be quashed.

60. This conclusion is consistent with the restraint mandated in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra [supra]***. The investigation in the present case is complete and the charge-sheet is before the Court. No disputed defence material is being preferred over the prosecution case. The complaint and the final report are accepted as they stand, yet, they do not disclose entrustment or dominion, followed by dishonest misappropriation, qua the petitioner. The defect is one of absence of the legal ingredients of Section 406 of IPC and not of insufficiency or reliability of evidence.

61. The plea of limitation, for the reasons recorded above, does not furnish a conclusive ground to terminate the remaining prosecution at this stage. The

allegations constituting the offence under Section 498A of IPC shall, therefore, be considered by the learned Trial Court in accordance with law. The prosecution under Section 406 of IPC, however, cannot be sustained against the petitioner and is liable to be quashed to that limited extent.

CONCLUSION

62. In view of the foregoing discussion, this Court in exercise of its inherent jurisdiction, partly allows the present petition.

63. Accordingly, ***FIR No. 184/2019*** dated 23.06.2019, registered at Police Station Kirti Nagar, District West, Delhi, the charge-sheet arising therefrom and all consequential proceedings are quashed qua the petitioner only insofar as they relate to the offence punishable under Section 406 of IPC. The FIR, the charge-sheet and the consequential proceedings shall continue against the petitioner in respect of the remaining offence i.e. Section 498A read with section 34 of IPC, in accordance with law.

64. The present petition is disposed of in the above terms.

65. The pending application also stands disposed of.

66. Interim order(s), if any, stand(s) vacated.

67. At the appropriate stage, before taking cognizance of the remaining offences(s), the learned Trial Court shall independently determine the plea of limitation in relation to the remaining prosecution, with reference to the date of filing of the complaint or institution of the prosecution. It shall also consider the period, if any, liable to be excluded under Section 470 of CrPC and the applicability of Section 473 of CrPC, on the basis of the material placed before it and without being influenced by any prima facie observation made in this judgment.

68. Nothing stated herein shall be construed as an expression on the merits of the remaining prosecution or as a finding that its ingredients stand established against the petitioner.

69. A copy of this judgment be sent to the concerned learned Trial Court for necessary information, action and compliance.

70. The judgment be uploaded on the website *forthwith.*

MADHU JAIN
[JUDGE]

SEPTEMBER 16, 2026/PG