2026:DHC:454

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 15.12.2025
Judgment pronounced on : 19.01.2026

\+ **CRL.REV.P. 3/2014 & CRL.M.A. 34910/2025, CRL.M.A. 34911/2025**

NARENDER SINGH .....Petitioner

versus

STATE ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. R. Gopal, Adv.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State with SI Parveen Kumar, PS Malviya Nagar.

Mr. Ashish Aggarwal, Mr. D.P. Faizi, Mr. Aanand Aggarwal, Ms. Darshana Aggarwal, Mr. Himanshu Singh, Mr. Rahul Malik, Ms. Tanya Jain and Ms. Nistha Verma, Advs. for R-2.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present revision petition has been filed by the Petitioner/Accused-Sh. Narender Singh, under Section 397, Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') assailing the Order dated 27.09.2013 passed by the learned

Additional Sessions Judge-03 ('**ASJ**'), South District, Saket Courts, whereby the learned ASJ set-aside the Order of discharge dated 18.07.2012 passed by the learned Metropolitan Magistrate ('**MM'**) and directed framing of charge against the Petitioner for the offence punishable under Section 193 of the Indian Penal Code, 1860 ('**IPC**').

2. The factual matrix giving rise to the present Petition discloses a protracted litigation history. Succinctly stated, it is the case of the Respondent No.2/Complainant- Smt. Indu that she was married to one Pankaj Malhotra on 04.10.1997. Allegedly, on 31.03.2003, a lady named Pooja claimed that Pankaj had obtained an *ex-parte* Decree of Divorce from Jaipur Court on 04.04.2002 against Indu and Pooja has gotten married to Pankaj on 09.12.2002. It is alleged that the *ex-parte* divorce Decree had been obtained by Pankaj, without the consent or knowledge of Indu and she was neither served with summons nor aware of the said proceedings. Thus, on a complaint by Respondent No.2, an FIR was registered, being, FIR No. 363/2003 at Police Station Mehrauli for offences punishable under Sections 376 and 493 IPC against her husband-Pankaj alleging that despite obtaining the *ex-parte* Decree of divorce he continued to establish sexual relations with her.

3. The chargesheet was thereafter filed against the main accused-Pankaj and the charges were framed for offences punishable under Sections 376 and 493 of the IPC on 21.03.2005.

4. During investigation, allegations surfaced that summons purportedly issued by the Jaipur Court, had been shown as served

upon the Complainant at Delhi, on the basis of a Service Report dated 05.11.2001 prepared by the present Petitioner/Sh. Narender Singh, who was working as a Process Server in the Nazarat Branch of Tis Hazari Courts at the relevant time, in connivance with Pankaj.

5. It is the case of the Complainant that the Petitioner inserted the word '*Saket*' on the original summons (*in a different handwriting and ink)*, allegedly to enable self-marking of the process, then he marked the summons to himself as the process server and instead of effecting personal service upon the complainant, he handed over the summons to her husband/Pankaj who obtained her signatures on the summons fraudulently. The Petitioner thereafter prepared and submitted a false service report to the court recording due service upon the Complainant.

6. On the basis of the said allegation, a supplementary charge-sheet was filed. Notably, the investigating agency did not find sufficient material to prosecute the Petitioner and gave him a clean chit in the supplementary report.

7. The learned MM, however, disagreed with the conclusion of the investigating agency and, *vide* Order dated 21.06.2007, observed that the alleged act of the Petitioner whereby he submitted a false report on the summons amounts to fabricating false evidence, as defined under section 192 of the IPC and punishable under sections 193 of the IPC and thus, summoned the Petitioner to face trial for the offence under Section 193 of the IPC.

8. This summoning order was challenged by the Petitioner before the Sessions Court and thereafter before this Court, but both the challenges were dismissed *vide* Orders dated 11.04.2008 and 03.07.2008, respectively.

9. The learned MM, considered the entire material on record and, after hearing the parties, passed a detailed Order dated 18.07.2012 discharging the Petitioner, on the grounds that: -

a) The original summons, forming the very basis of the accusation of preparation of a false service report, were neither seized from Jaipur Court nor produced during investigation;

b) The reliance on findings recorded in departmental proceedings, wherein the Petitioner was held guilty for "*misconduct*", was misplaced as the standard of proof in criminal proceedings is different and even the Original Report had not been exhibited therein.

c) The investigation was perfunctory, as no effort was made to obtain the judicial record from the Jaipur Court or to secure any handwriting or forensic opinion to attribute the alleged insertion of "*Saket*" in the original summons to the Petitioner;

d) There was no evidence establishing any nexus, agreement or conspiracy between the Petitioner and the husband/Pankaj;

e) Lack of material indicating *mens rea* or intentional fabrication of false evidence, particularly when the Complainant had not denied her signatures and even the handwriting on the summons.

10. Aggrieved by the above Order of discharge dated 18.07.2012, the Respondent No.2/Complainant preferred a revision petition before the Sessions Court.

11. The learned ASJ, *vide* the impugned order dated 27.09.2013, set-aside the order of discharge and directed framing of charge against the Petitioner under Section 193 of the IPC on the below-mentioned grounds: -

a) The learned MM had failed to consider the earlier judicial orders whereby the accused had been summoned under Section 193 IPC and such summoning had been upheld successively by the Sessions Court and this Court;

b) Departmental proceedings under the CCS (CCA) Rules 1965 had culminated in the imposition of a major penalty upon the Petitioner and the Competent Authority had summoned and perused the original judicial record from the Jaipur Court which included the Original Service Report, thereby lending corroboration to the allegation of preparation of false report;

c) The Service Report before the Jaipur Court stated that summons was served upon the Complainant on 05.11.2001 at noon, whereas the Complainant asserted

that she was present in her office at that time and the same is supported by the Statement of Principal B.S. Negi.

12. Aggrieved by the above Order, the present revision Petition has been filed.

13. The learned Counsel for the Petitioner has submitted that the impugned order dated 27.09.2013 is liable to be set-aside as the Complainant had admitted her signatures and handwriting on the subject summons, which reflects that she had received them and had a knowledge of the proceedings. Further, the *ex-parte* Decree has also not been challenged by the Complainant.

14. He further submits that the Petitioner's role, if any, was confined solely to the divorce proceedings titled *Pankaj Malhotra v. Indu Malhotra*, and such act would fall within the territorial jurisdiction of the Jaipur Court alone and not the courts at Delhi.

15. He further submits that as per Section 195 of the CrPC, a prior complaint of the concerned Court was mandatory before initiating prosecution of the Petitioner under Section 193 of the IPC.

16. He further submits that the reliance placed on Disciplinary proceedings and the major penalty imposed is completely misplaced as determination in a disciplinary service matter or departmental proceeding is merely an administrative adjudicatory process, which cannot form the basis of initiating criminal trial against the Petitioner. He further submits that the challenge to the Disciplinary enquiry is pending before the Hon'ble High Court as *W.P. No. 4339/2007*.

17. He further submits that even the main accused-Sh. Pankaj has been acquitted *vide* judgment *dated* 03.06.2014, for the offences under section 376/493 of the IPC.

18. Hence, in view of the above, subjecting the process-server to a full-fledged criminal trial, at this stage, in an FIR registered in the year 2003, would amount to gross abuse of the process of the Court. Thus, it is prayed that the present petition be allowed, the impugned order be set-aside and all consequential proceedings *qua* the Petitioner be quashed.

19. *Per Contra,* the learned Additional Public Prosecutor for the State and the Counsel for the Respondent No. 2 have vehemently opposed the present Petition and have submitted that the impugned order has been passed after due consideration of the material placed on record and by observing that there is *prima facie* sufficient material to raise a grave suspicion against the Petitioner.

20. It is further submitted that the issue with respect to the application of the bar of Section 195 was decided by the Sessions Court before whom the summoning order was challenged as well as by this Court in Order dated 03.07.2008 in Crl. M.C. No. 2042/2008 titled '*Narender Singh v. State*' and it was held that since the document was manipulated beforehand and not after it was produced or filed in the concerned Court, the bar under section 195 of the CrPC would not be applicable.

21. It is further submitted that the issue of territorial jurisdiction has also been decided by this Court *vide* the above Order dated 30.07.2008

and it has been held that since the summons were allegedly forged at Delhi and the service report was also fabricated in Delhi, thus, the Delhi Courts have jurisdiction to entertain, try and adjudicate upon the present case.

22. It is further submitted that in the Departmental proceedings, the Petitioner has already been held guilty for manipulating the service of summons and preparing a false report. The learned Administrative Civil Judge, had further called for the records from the concerned Court in Jaipur and passed the final order dated 29.08.2006, imposing a major penalty on the Petitioner.

23. Thus, it is submitted that the impugned order warrants no interference and the present petition be dismissed.

24. Submission heard and the material placed on record perused.

Analysis

25. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge/discharge is well settled. The power ought to be exercised sparingly, in the interest of justice. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

26. At outset, it would be apposite to mention that the allegation against the Petitioner is of having fabricated a report pertaining to the service of summons while functioning as a process server at Delhi, and the alleged act is stated to have been committed at Delhi prior to the report being transmitted to or acted upon by the Court at Jaipur.

Hence, at this stage, and for the limited purpose of examining the legality of the impugned order, the view taken by the learned Additional Sessions Judge that the courts at Delhi would have the jurisdiction to examine the alleged act cannot be said to suffer from any patent illegality or perversity, specifically when the same issue has already been decided by this Court *vide* order dated 30.07.2008 in CRL.M.C. No. 2042/2008 titled "*Narender Singh v. State*".

27. Since the Petitioner has assailed the impugned order whereby the learned ASJ directed framing of charges against the Petitioner, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

> *"227. Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that* ***there is not sufficient ground for proceeding against the accused,*** *he shall discharge the accused and record his reasons for so doing.*
> *228. Framing of Charge*
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*
> *(a) is not exclusively triable by the Court of Session, he may, frame*
> *a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the*

> *Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
> *(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

28. The Hon'ble Apex Court in ***Union of India v. Prafulla Kumar Samal* : (1979) 3 SCC 4**, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. *Inter alia*, the following principles were laid down by the Court:

> *"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Codehas the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
> *xxx xxx xxx*
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application.* ***By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.****"*
>
> (emphasis supplied)

29. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a prima *facie case* would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

> *"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
> *(iii)* ***The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***
> *(iv)* ***If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.***
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of*

> *offence by the accused was possible.*
> *(vi)* ***At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
> *(vii)* ***If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.****"*
>
> (emphasis supplied)

30. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** **: (2023) 17 SCC 688**, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

> *"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no*

> *sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.*
> *xxx xxx xxx*
> *12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."*

31. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

32. It must be borne in mind that an order of discharge passed after due application of mind by the learned MM to the material on record is a judicial order, could not have been be interfered with in revisional jurisdiction, by the learned ASJ, merely on the existence of a different view that too primarily based on the conclusion arrived at by the

departmental proceedings. Interference was permissible only where the order is shown to be perverse, manifestly illegal, or based on no material.

33. A careful reading of the order of discharge dated 18.07.2012 passed by the learned MM shows that a detailed analysis of the prosecution material was undertaken, and the allegations were examined in light of the essential ingredients of the offence alleged, and cogent reasons were recorded for discharging the Petitioner.

34. The relevant sections 192 and 193 of the IPC provide as under:-

> ***" 192. Fabricating false evidence****.—Whoever causes any circumstance to exist or [makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement,] intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".*
>
> ***193. Punishment for false evidence.****—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.*

> *Explanation 1.—A trial before a Court-martial ***is a judicial proceeding.*
> *Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice."*

35. It emerges that the above provisions contemplate intentional giving or fabricating of false evidence in a judicial proceeding or for the purpose of being used in a judicial proceeding. Evidently, the offence requires the *existence of deliberate falsity* coupled with the *intention to mislead a court of law*.

36. The allegations against the Petitioner, the process-server, is that he added the word "*Saket*" in the original summons, marked the same upon himself, did not serve the summons of the pending divorce case upon the Complainant and he fabricated and prepared a false service report in Delhi, on the basis of which Pankaj obtained an *ex-parte* divorce decree as the Report indicated that he had visited the premises of the Complainant in Saket, New Delhi and served summons upon her.

37. Evidently, the very foundation of the allegation was the *Service Report* allegedly made by the Petitioner on the original summons issued by the Jaipur Court.

38. The learned MM recorded a categorical finding that the investigating agency had failed to seize or place on record the original summons containing the alleged false endorsement. The prosecution thus sought to proceed without producing the primary document which allegedly constituted the false evidence. In the absence of the

original summons, the allegation of fabrication of false evidence was rendered inherently fragile.

39. The learned ASJ has not demonstrated how a charge under Section 193 of the IPC could have been sustained in the absence of the document which is alleged to constitute false evidence. The observation that the original records including the original report were called for and perused during departmental proceedings cannot substitute the requirement of producing the document in accordance with criminal law. Criminal prosecution cannot be founded upon oral assertions or departmental findings regarding the existence of a document without the document itself forming part of the record.

40. The learned MM had correctly held that findings returned in departmental proceedings cannot, *per se*, constitute the foundation of a criminal prosecution, as the standards of proof governing departmental enquiries and criminal trials are fundamentally distinct. However, the learned Additional Sessions Judge erred in according undue weight to the departmental penalty imposed upon the Petitioner and impermissibly treated the same as corroborative material for the purpose of framing charges.

41. It is a settled legal position that the objects and purposes of the two proceedings are materially different. Departmental proceedings are intended to maintain administrative discipline and efficiency within the service, whereas criminal trials are concerned with determination of penal liability for offences against the State.

42. In the present case, the departmental proceedings, being administrative in character, culminated in a finding of "*misconduct*" based on the standard of "*preponderance of probabilities*", with the limited object of enforcing service discipline, wherein the original Service Report was not even exhibited. In contrast, the framing of charges in a criminal case requires the Court to arrive at a satisfaction that the material placed on record discloses a "*grave suspicion*" against the accused. A criminal court has to confine its scrutiny to the material collected by the prosecution and placed on record along with the charge-sheet. Unless the material relied upon in departmental proceedings is independently brought on record and proved in accordance with law, such findings cannot be elevated to substantive evidence in a criminal case or form the basis of framing of criminal charges against the delinquent official.

43. In the opinion of this Court, in the absence of primary evidence in regard to allegation of forgery, i.e. the alleged forged document, the continuation of trial, only on the basis of allegations and the opinion in departmental proceedings, would be an abuse of the process of Court. Once it is apparent that the offence cannot be proved in the absence of primary evidence, the proceedings ought to be closed.

44. Another fundamental error in the impugned order is the reliance placed by the learned ASJ on prior summoning orders. The learned ASJ proceeded on the premise that since the summoning order under Section 193 of the IPC had earlier been upheld by the Sessions Court and this Court, the learned MM could not have discharged the

Petitioner. If this logic adopted by the learned ASJ is accepted, the natural corollary to the same would be that the charges have to be necessarily framed (without any scope of discharge), once an accused is summoned and the challenges to the same have been dismissed by superior Courts. This view is legally untenable as the stage of summoning, framing of charge and consideration of discharge are distinct stages under the CrPC, with distinct thresholds.

45. The gravamen of the allegation concerning preparation of a false service report is predicated entirely on the claim that the summons were never, in fact, received or served upon the Complainant. On this aspect, the learned MM also recorded clear findings that the Complainant has admitted her signatures and her handwriting on the summons, which further weakens the case of the prosecution that she had never received the same. Though it had been stated that her signatures were fraudulently taken by her husband, there was no material on record to establish any nexus or conspiracy between the Petitioner and the husband of the Complainant, no disclosure statement or incriminating circumstance linking the Petitioner to any illegal agreement with Pankaj, and no evidence to show deliberate deception attributable to the Petitioner.

46. Further, even no forensic opinion with respect to interpolation of the word "*Saket*" on the summons, to attribute the same to the Petitioner had been obtained.

47. At this juncture, it would also be beneficial to note that the main accused has been acquitted *vide* judgment *dated* 03.06.2014, for the

offences under section 376/493 of the IPC. The trial court therein conclusively recorded that Complainant possessed knowledge of the divorce proceedings and had voluntarily affixed her signatures on the summons dated 05.11.2001, even writing her address and date of receipt herself. The court disbelieved her subsequent fraud allegation, observing that as an educated bank officer, she could not have blindly signed documents at her husband's behest. The relevant observations are reproduced as under: -

> *"xxx xxx xxx*
>
> *However, it was argued by the Id. defence that* ***the said summons Ex.PW2/DB do bear the signatures of the prosecutrix*** *and though she alleges that accused got her signatures fraudulently* ***but during cross examination by the Id. Prosecutor, the prosecutrix had deposed that she did not remember if she had ever received such summons or may be the accused took her in good faith and obtain her signatures while misleading her about some other papers.*** *It was argued by the Id counsel for the accused that the prosecutrix failed to categorically deny that she never received or never signed the summons but had simply alleged that she did not remember if she ever received such summons or may be the accused had taken her signatures on false pretext.*
>
> *A bare perusal of the summons Ex.PW2/DB would show the signatures of the prosecutrix with date and address. The prosecutrix admitted her signatures on the summons dated 5-11-2001 and herself wrote her address and date of receipt of summons on the summons Ex.PW2/DB.* ***Now if she admits her signatures and writing on the summons EX.PW2/DB, then she being an educated lady, an officer in a bank, would she easily sign on a blank document merely on the asking, of her husband. I doubt. An educated person would never sign any document on a mere asking of a spouse without knowing its contents, especially when relations are***

> ***not so good and hence later, she cannot be allowed to retract this evidence when she herself is not too sure in deposing that the summon was never received by her.***
> *Xxx xxx xxx*
>
> *Thus, in view of the discussions above wherein I had observed that* ***the prosecutrix had not categorically denied the service of summons upon her and she being an educated lady had not only signed on summons dated 5-11-2001 but even had written the date and her address ; hence it can not be said that she was not aware of the document she was signing at. More so, PW6 says that the prosecutrix was aware of the divorce proceedings when he met her and also an affidavit EX.PW3/DA needs to be looked into wherein PW3 Ms. Pooja, the second wife of accused, says that she met the prosecutrix prior to her marriage with accused for verifying whether the prosecutrix has been divorced.*** *These facts cannot be ignored."*

48. Though the appeal against the above judgment of acquittal is pending before the High Court, however, the observations in the same still fundamentally undermines the prosecution's foundation that summons service was falsely reported by Petitioner when the complainant herself stands discredited on the core issue of receipt of summons in the main trial.

49. Even otherwise, this Court finds the prosecution's stance untenable as the *ex-parte* divorce decree passed by Jaipur Family Court, allegedly premised entirely on the alleged false service report, has never been challenged by Complainant Indu within limitation and the same has attained finality. This acquiescence confirms she suffered no prejudice from the service allegedly effected by Petitioner otherwise a Complainant aggrieved by non-service would prioritize

setting aside the Decree affecting her marital status, not pursuing the process server criminally over a decade later.

50. However, none of these aspects were discussed by the learned ASJ in the impugned order and thus, the vague observation of the learned ASJ that there were "*other circumstances*" giving rise to grave suspicion, without identifying or analysing such circumstances, cannot sustain a criminal charge. The allegations, if at all, may have raised some doubt, but considering the overall facts and circumstances, no grave suspicion is raised so as to warrant framing of charge against the Petitioner under section 193 of the IPC.

51. This Court is therefore of the considered view that the learned ASJ exceeded the permissible limits of revisional jurisdiction and substituted his own opinion for that of the learned MM without even addressing all the aspects considered in the discharge order.

52. In view of the above, the impugned order dated 27.09.2013 passed by the learned ASJ is set aside and the order dated 18.07.2012 passed by the learned MM discharging the Petitioner is restored.

53. Before parting, it is noted that though an objection regarding Section 195 of CrPC was raised by the Petitioner, however, since the very same objection had been raised earlier and was expressly considered and rejected on merits, including by the learned ASJ, and such rejection was affirmed by a Coordinate Bench of this Court *vide* order dated 30.07.2008 in CRL.M.C. No. 2042/2008. The relevant observations are as under: -

> *"....Considering the facts and circumstances it is apparent that there are specific allegations of fabricating the report on the summons of service at a time when the complainant was not present at her residence and being a Government servant was on duty.* ***The fabrication of the report was not done in the Court. The Additional Sessions Judge has considered that fabrication was done in the summons issued by the Court and in the circumstances there was no bar on taking cognizance. The learned counsel for the petitioner has submitted that no cognizance can be taken except upon the complaint of the Court and has relied on (1998) 2 SCC 493, Sachida Nand Singh & Anr Vs. State of Bihar and Anr and 118 (2005) DLT 329 (SC), Iqbal Singh Marwah & Ors. Perusal of the judgments relied on by the petitioner reflects that they are clearly distinguishable. In Sachida Nand Singh & Anr (Supra) it was held by the Apex Court that there is no bar under Section 195(l)(b) of taking cognizance of offence if the offence was committed before document was produced in the Court. Bar contained in Section 195(l)(b)(ii) of Cr.P.C. would not apply where forgery of the said document was committed before the said document was produced in court. Admittedly the report on the summons issued by the family Court at Jaipur which was to be served on the complainant Smt. Indu Malhotra, was allegedly fabricated by the complainant at Delhi……..***"

54. Hence, in view of the above, this Court has refrained from re-examining and commenting upon the same, for sake of judicial propriety and institutional discipline and has discharged the Petitioner on merits.

55. In view of the above, the present Petition is allowed.

56. Pending applications, if any, stand disposed of.

AMIT MAHAJAN, J

JANUARY 19, 2026
'KDK'