



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

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*Reserved on: 29th August, 2025
Pronounced on: 03rd November, 2025*

+ **CRL.M.C. 1641/2021, CRL.M.A. 11506/2021,
CRL.M.A. 18426/2025**

1. **OM SARAN GUPTA**
S/o Late Shri Sita Ram Gupta
R/o D-9, Gali no.1, Mohan Baba Nagar,
Badarpur Border, South Delhi
New Delhi -110044
2. **SIDDHARTH GUPTA @ LOHIA**
S/o Sh. Om Saran Gupta
R/o D-9, Gali no.1, Mohan Baba Nagar,
Badarpur Border, South Delhi
New Delhi -110044
3. **ASHISH GUPTA**
S/o Sh. Om Saran Gupta
R/o D-9, Gali no.1, Mohan Baba Nagar,
Badarpur Border, South Delhi
New Delhi -110044

.....Petitioners

Through: Petitioner in person.

Versus

1. **STATE OF NCT OF DELHI**
Through Standing Counsel (Crl.)
High Court of Delhi
New Delhi



2. **NISHI**

Ex-wife of Sh. Jeetender Kumar Jaidka
D/o Tilak Raj Khurana
R/o 265, LIG Flats, Pocket -3
Paschim Puri, West Delhi
New Delhi -110063

.....Respondents

Through: Mr. Shoaib Haider, APP for the State
with SI Devender Yadav.
Mr. Mahinder Singh, Advocate for R-
2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "CrPC"*) has been filed on behalf of the Petitioners, *Om Saran Gupta, Siddharth Gupta @ Lohia and Ashish Gupta* seeking quashing of **FIR No. 073/2015 dated 22.01.2015** registered under **Sections 498A/406/34** of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) P.S. Vikas Puri, the Chargesheet and **Summoning Order dated 15.01.2021** passed by Ld. MM-04 Delhi and all consequential proceedings emanating therefrom.

2. At the outset, it has to be noted that the Petitioner No.2/Siddharth Gupta and Petitioner No.3/Ashish Gupta have been **discharged** under Sections 498A/406/34 IPC by the Ld. MM (Mahila Court)-04, South West



District, Dwarka Court, New Delhi *vide* Order dated 16.03.2023. **The present Petition is, thus, pertaining to the Petitioner/Om Saran Gupta.**

Contentions of the Petitioners:

3. The **brief facts of the case** are that Respondent No.2/Nishi married one Jeetender Jaidka on 17.02.1991 in Delhi and has two daughters borne from the said wedlock, namely, Dhaarna born on 26.03.1992, aged 29 years and Deepakshi born on 13.05.1994, aged 27 years.

4. It is submitted that Respondent No.2 was introduced to Petitioner No.1/Om Saran Gupta, aged 66 years, a practicing Advocate by one Anil Kakkar when she required some legal advice. Subsequently, Respondent No. 2 engaged Petitioner No.1 to file a Divorce Petition against her husband, Jitender Jaidka. Although the Ld. ADJ-04, West Delhi, granted an *ex-parte* decree of divorce in favour of Respondent No. 2/Nishi on 07.08.2010, despite which she continued to reside with her divorced husband.

5. It is submitted that Petitioner No.1/Om Saran Gupta, is residing with his family in Delhi. He was married to Sholi Gupta on 04.06.1985 at Auraiya District Etawah (U.P.) and had two sons and one daughter from the said wedlock. His sons (since discharged) i.e. Petitioner No.2/Siddharth Gupta, aged 35 years, is an engineer, and Petitioner No.3/Ashish aged 28 years, is preparing for Judiciary.

6. It is submitted that Respondent No.2/Nishi initially lodged a Complaint on 22.07.2014 with PS Punjabi Bagh in her name as *Nishi D/o Sh. Tilak Raj Khuarana*. She then filed a **Complaint bearing No. 838/2014**



on **23.07.2014** under Sections 376/379/420/406/494/323/506 IPC along with an Application under Section 156(3) CrPC, against Petitioner No.1/Om Saran Gupta, in the Court of Ld. MM.

7. Ld. MM-1, Delhi referred the Application under Section 156(3) Cr.P.C for enquiry to the SHO concerned, who gave a **Status Report** as under:

*“Ms. Nishi was married to Jitender Jaidka on 17.02.1999 and two daughters were born from the wedlock. In the year 2002/ she got divorce from her first husband Jitender Jaidka. After that she came in touch with Om Saran Gupta and later they got married on 25.12.2007 in Arya Samaj Mandir Tagore Garden Delhi as per rites and rituals of Arya Samaj Mandir. Since then, they lived together as husband and wife for about 7 years. Thereafter, some matrimonial and property dispute was arise between complainant Ms. Nishi and her husband Om Saran Gupta. Complainant and alleged person are husband and wife. Complainant Ms. Nishi and alleged Om Saran Gupta is married with each other and live together for 7 years as husband and wife. No allegation of rape is sustained. **This seems to be dispute between husband and wife over the family issues.**”*

8. On 22.08.2014, the Respondent No.2/Nishi made a statement before the Ld. MM and **withdrew her Complaint.**

9. On the same day i.e. 22.08.2014, the Respondent No.2/Nishi lodged the **Complaint No.808/2014** as Nishi Gupta W/o Om Saran Gupta, with the **CAW Cell, Kirti Nagar** against Petitioner No.1/Om Saran Gupta and Petitioners No.2/Siddharth Gupta and 3/Ashish Gupta, sons of Petitioner No.1 with the following allegations:



“ ... It is respectfully submitted that I Nishi Gupta was married on 27.08.2007 to Om Saran Gupta according to Hindu customs in Aarya Samaj Mandir, Tagore Garden. My parents to their capacity has given dowry in the marriage. That was her second marriage. Prior to that she was married to Jeetender Jaidka from whom she has two daughters namely Dhaarna and Deepakshi. In the divorce case Om Saran Gupta was her counsel. He in front of my parents by saying that his divorce has been done/ and that his two sons Siddharth and Ashish and daughter Riha reside with their aunt (Buaa) Sudha Gupta/ proposed for marriage with me. My parents accepted the proposal and in this way my marriage was solemnized on 27.08.2007 with Om Saran Gupta. After that I and my husband Om Saran Gupta and my both daughters started residing in BG-6/1 08D/ Paschim Vihar New Delhi.”

10. This Complaint culminated into present FIR No.73/2015 dated 22.01.2015 at P.S. Vikaspuri under Section 498A/406/34 IPC, against the Petitioners.

11. It is asserted that Respondent No.2/Nishi got the case registered by perpetrating a fraud upon the Police and the Petitioners, by willfully concealing the material facts that she had obtained a decree of Divorce dated on 07.08.2010 from her first husband, Jeetender Jaidka, subsequent to her marriage with the Petitioner No.1 which was performed on 27.08.2007. She falsely claimed that she was divorced at the time of her marriage with Petitioner No.1.

12. It is further submitted that the sole motive of Respondent No.2 in allegedly getting the FIR registered under Sections 498A/406/34 IPC against



the Petitioners, was to extort money and property from him and his two sons by misusing the legal process, as she was already in possession of signed SBI cheques amounting to Rs. 40 lakhs, which she had illegally obtained from Petitioner No.1.

13. The ulterior motive of Respondent No. 2 in falsely claiming Petitioner No. 1 as her husband, was solely to create a pretext suggesting that Petitioner No. 1 had access to her house, who could allegedly remove the jewellery worth Rs. 40 lakhs from the almirah without her consent, and was compelled under threat of Respondent No. 2 calling the police, to issue a cheque of Rs. 40 lakhs.

14. Furthermore, in a case filed under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*) by Respondent No. 2 based on the same false and unscrupulously concocted story, the Court of the Ld. MM-2, NI Act, Delhi *vide* its Judgment dated 20.07.2020 (after a trial spanning over 6 years), acquitted Petitioner No. 1 of the alleged offence holding that there was no entrustment or misappropriation of the jewellery by Petitioner No. 1.

15. The Petitioner No.1/Om Saran Gupta was completely unaware of the past and ongoing misconduct of Respondent No.2/Nishi, who has been targeting married individuals who were vulnerable due to their reputation, and got involved in physical relationship with them and simultaneously did recording of obscene images to blackmail them, in order to fulfill her and her two daughters demands.

16. The alleged marriage of Respondent No.2 on 27.08.2007 to the Petitioner No.1, is in contravention of Section 5 (i) of the Hindu Marriage



Act, 1955 (*hereinafter referred to as "HMA"*), which provides that both the spouses shall be unmarried at the time of marriage. The marriage of Respondent No.2 with her husband, Jitender Jaidka was subsisting on 27.08.2007 and continued to subsist till her divorce on 07.08.2010. Thus, as on 27.08.2007, marriages of both were subsisting, their marriage was *void ab initio*.

17. It is further submitted that Marriage Certificate dated 25.12.2007 is false, fabricated, and fraudulently obtained. The Marriage Certificate is on its face, is invalid as it lacks the signatures of both Petitioner No.1 and Respondent No.2, as well as the signatures of any witness to the marriage. Furthermore, it does not bear the signature of the President, Secretary, or Treasurer of the Arya Samaj Mandir. Such a defective Certificate cannot be relied upon to assert that Respondent No.2 is legally married to Petitioner No.1 following her divorce from her previous husband, as she is now claiming.

18. It is submitted that the allegation made in the FIR regarding engagement in the business of readymade Garments is highly doubtful when compared with the Bank Statements, making it difficult to believe that such a business was ever conducted by Respondent No.2. Furthermore, after opening the bank account, Respondent No.2 promptly changed the name on her PAN Card from Nishi Gupta to Nishi, which *prima facie* indicates her ulterior motive of creating a false "*alibi*" through the bank account, to commit fraud.

19. The **grounds taken by the Petitioners** for quashing of FIR are that it is *prima facie* established that Petitioner No.1 is not the husband of



Respondent No.2 and therefore, Section 498A IPC cannot be invoked against Petitioner No.1. There is not even a whisper or shred of reference in the FIR to the fact that Respondent No. 2 had obtained a divorce from her erstwhile husband, Mr. Jitender Jaidka, on 07.08.2010 which is subsequent to their marriage.

20. It is further submitted that *vide* judgment dated 20.07.2020, Ld. MM has acquitted the Petitioner of the offence under Section 138 NI Act, and similar allegations cannot be alleged in the present FIR.

21. The present Petition has been filed to prevent the abuse of the process of the Court. The very law enacted to protect women from cruelty by their husband or the relatives of their husband, is being misused as a weapon by Respondent No. 2.

22. It is a settled law that a litigant, who approaches the Court, is bound to produce all the documents which are relevant to the litigation. If he/she withholds a vital document in order to gain advantage on the other side, then he /she would be guilty of playing fraud on the Court as well as on the opposite party and that fraud vitiates everything. Reliance is placed on case titled Meghmala & Ors vs. G. Narasimha Reddy & Ors., decided on 16.08.2010, A.V. Papayya Sastry & Ors vs. Government of A.P. & Ors., decided on 07.03.2007, Ram Chandra Singh vs. Savitri Devi and Ors., decided on 09.10.2003, Satluj Jal Vidyut Nigam Ltd. vs. Raj Kumar Rajinder Singh, decided on 24.09.2018.

23. Hence, a prayer is made that the present Petition be allowed and the FIR, Chargesheet, Summoning Order and subsequent proceedings, be quashed.



Contentions of the Respondent No.2, Nishi:

24. *Ld. Counsel for Respondent No.2/the Complainant has reiterated the averments made in the Complaint. However, no formal Reply has been filed on behalf of the Respondent No.2.*

25. It is stated that the Complainant/Nishi Gupta, was married to the Petitioner/Om Saran Gupta on 27.08.2007 according to Hindu customs at Arya Samaj Mandir, Tagore Garden. This was her second marriage, and she has two daughters, Dhaarna and Deepakshi, from her previous marriage. The Petitioner/Om Saran Gupta, who had acted as her counsel in her divorce case, falsely represented to her parents that his own divorce was finalized and proposed marriage, which was accepted. After marriage, Petitioner and Respondent No.2 began residing in *Paschim Vihar, New Delhi*.

26. It is submitted that after their marriage, the Petitioner committed to adopt the Complainant's daughters and had his name entered as their father in school records. He also opened a joint bank account with her. The Complainant, who ran a readymade garments business, deposited her earnings in this account, from which the Petitioner withdrew money without her knowledge. *When confronted, he abused and assaulted her, demanding more money.*

27. It is further submitted that jewellery worth approximately Rs. 40 lakhs was kept in their home locker (one key held by the Petitioner). The Complainant found the jewellery to be missing in June 2011. When she confronted the Petitioner, he admitted to mortgaging it at *Muthoot Finance, Meera Bagh*, claiming it was to purchase a house.



28. It is further submitted that though he returned the jewellery after two years, he again mortgaged it in November 2013 with *Shyam Jewellers, Raghubir Nagar*, while the Complainant was at the hospital with her daughter. When she demanded its return, he gave her an SBI cheque (No. 288037, dated 29.11.2013) for Rs. 40 lakhs, which was dishonoured on 30.11.2013. After further confrontation, he issued another cheque (No. 288038, dated 07.07.2014) for the same amount, which also got dishonoured when presented on 01.08.2014. When the Complainant confronted him, the Petitioner and his two sons threatened the Complainant and her daughters.

29. Furthermore, on one such occasion, when she raised her voice against his conduct, the Petitioner threatened her by saying that the intimate videos of her with him, which are in possession of his sons, would be uploaded on the internet. Despite repeated deceit, apologies, and false assurances, the Petitioner continued to harass her, demanding more money and refusing to return the jewellery.

30. Hence, the said Complaint was lodged under Sections 498A, 406, 34 IPC.

31. *It is submitted that considering the conduct of the Petitioners, the present Petition seeking quashing of the Complaint is liable to be dismissed.*

Contentions of the Respondent No.1/State:

32. The Status Report dated 18.02.2022 has been filed on behalf of the State detailing the facts of the case as per the Complaint of Respondent No.2.



33. It is stated that the after completion of the investigation, the Chargesheet was filed against Om Sharan Gupta and his sons, namely, Siddharth Gupta and Aashish Gupta in under Sections 498A/406/34 IPC before the Ld. MM (Mahila Court), Dwarka Delhi.

34. It is further stated that the Complainant has concealed the fact regarding her divorce on 07.08.2010.

35. It is submitted that since the Chargesheet has already been filed, the Petitioners can raise all the please before the Ld. Trial Court. *Hence, the present Petition is liable to be dismissed.*

Submissions heard and record perused.

Allegations under Section 498A IPC:

36. The ***main ground*** on which quashing is sought is that Sections 498A/406/34 IPC are not attracted as the marriage of Petitioner No. 1 with the Respondent No.2 was *void ab inito*. Therefore, there was never any relationship of *husband and wife* and no offence under Section 498A IPC, was made out.

37. ***Firstly***, it is pertinent to note that *vide* Judgment dated 05.05.2022, the Ld. Judge, Family Court (West), Tis Hazari, Delhi has declared the alleged **marriage between the Petitioner No.1/Om Saran Gupta and Respondent No.2/Nishi performed on 27.08.2007 as *null and void*, under Section 11 of the Hindu Marriage Act, 1955.** Furthermore, the Respondent No.2 has been restrained from calling herself the wife of Petitioner No.1 and



from using the said Marriage Certificate or any photographs depicting them as husband and wife.

38. The entire foundation of the Complaint/FIR No. 73/2015 rests upon the alleged marriage dated 27.08.2007 between Respondent No.2/Nishi and Petitioner No.1/Om Saran Gupta. However, it stands admitted that Respondent No.2's earlier marriage with one, Jitender Jaidka was not legally dissolved until 07.08.2010. Moreover, the marriage stands declared *null and void vide* Judgement dated 05.05.2022.

39. ***The legal issue is thus, whether Section 498A IPC which apply to a "husband" or his "relatives", would be attracted against Petitioner No.1, once their marriage is declared null and void.***

40. The Apex Court in the case of Reema Aggarwal vs. Anupam, (2004) 3 SCC 19, observed that the expression "husband" covers a person who enters into a marital relationship and under the colour of such proclaimed or feigned status of husband, subjects the woman concerned to cruelty in the manner provided under Section 498A IPC, whatever be the legitimacy of the marriage itself for the limited purpose of Section 498A. The absence of a definition of "*husband*" specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" and nullity of such relationship is no ground to exclude them from the purview of 498A IPC.

41. It is not disputed that the parties had got married on 27.08.2007, for which *Arya Samaj Mandir* Certificate dated 25.12.2007 was also issued. Notwithstanding that their marriage was subsequently declared a nullity, it cannot be overlooked that after their marriage they lived as husband and



wife and the allegations in the FIR dated 22.01.2015, are essentially pertaining to the time they were in the relationship of husband and wife. Pertinently, at that time the marriage had not yet been declared *null and void* by the Ld. Family Court which was so declared only on 05.05.2022. *Therefore, the Petitioner cannot seek any avoidance from the offence under Section 498A IPC, on this ground.* Considering the purposive interpretation of the definition of the Husband to cover persons who enter into marital relationships, even if their marriage is subsequently declared technically invalid, Section 498A IPC would still be applicable. ***The Petitioner cannot seek discharge on this technical ground.***

42. *It is now imperative to examine whether the allegations in the Complaint of Respondent No. 2/Nishi, disclose the commission of any offence under Section 498A IPC, which reads as under:*

“Section 498A. Husband or relative of husband of 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.

Explanation.— For the purposes of this section, “cruelty means”—

(a) any wilful 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



(b) 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.”

43. For commission of an offence under Section 498A, following necessary **ingredients** require to be satisfied:-

- (a) The woman must be married;*
- (b) She must be subjected to cruelty or harassment; and*
- (c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.*

44. The Apex Court in Digambar and Another vs. The State of Maharashtra and Another, 2024 INSC 1019 observed that Section 498A penalizes the act of ‘**cruelty**’ by a ‘**husband or his relative**’ towards a woman as has been defined in the *Explanation* appended thereto which provides that the **cruelty** punishable under Section 498A IPC may be of two kinds:-

*(i) **there has to be cruelty inflicted** against the victim which either drives her to commit suicide or cause grave injury to herself or to lead such conduct that would cause grave injury and danger to life, limb or health, or*

*(ii) **harassment** with a view to satisfy an unlawful demand for any property or valuable security.*

45. In the case of Dara Lakshmi Narayana and Others vs. State of Telangana and Another, 2024 SCC OnLine SC 3682, the Apex Court while



dealing with the components of Section 498A IPC and to ascertain whether the same are attracted on vague allegations raised by the wife, observed that the contents of the Complaint may be assessed to see if there is any kind of cruelty as contemplated in Clause 1 or if there is any harassment for dowry as contemplated in Clause 2 is made out.

46. In Jayedeeptsinh Pravinsinh Chavda and Others vs. State of Gujarat, 2024 SCC OnLine SC 3679, the Apex Court again while considering the guilt of the husband under Section 498A observed that cruelty *simpliciter* is not enough to constitute the offence under Section 498A; rather it must be done either with an intention to cause injury or to drive the person to commit suicide or with an intention to coerce her and her relatives to meet unlawful demands. Mere cruelty is not enough to constitute the offence.

47. In the present case, the Complainant has largely alleged harassment on account of dowry and cruelty because of the conduct of the Petitioners along with other family members.

48. The FIR alleges that Respondent No.2's parents "*to their capacity have given dowry in the marriage*" but does not specify the nature, quantum, or details of the alleged dowry items except later making a broad claim of jewelry worth Rs. 40 lakhs, having been taken away by the Petitioner.

49. Pertinently, the Respondent ostensibly took cheques of Rs.40 lakhs from the Petitioner, *in lieu* thereof which on presentation got dishonoured. In the Complaint under Section 138 NI Act filed by the Respondent No.2, the Petitioner was acquitted with the observations that the Complainant failed to establish the existence of any legally enforceable debt or liability. It was



noted that the Complainant had not mentioned any specific details regarding the alleged transaction, such as the exact weight, description, or valuation of the jewellery/articles allegedly sold, nor was any receipt, bill, or acknowledgment placed on record to substantiate the claim of sale. Furthermore, no independent witness was examined to corroborate the alleged transaction or the delivery of the jewellery.

50. Even if for the sake of arguments, it is accepted that the Petitioner had taken away jewellery worth Rs.40 lakhs of the Petitioner, then too it cannot be said to be an act of cruelty or harassment as provided under Section 498A IPC. For this reference may be made to the case of Arvind Singh vs. State of Bihar, (2001) 6 SCC 407 wherein the term ‘cruelty’ was considered and it was observed that the **Legislative intent in Section 498A IPC** is clear to indicate that in the event of there being a state of conduct by the husband or his relatives towards the wife, which is attributed to be painful or distressing, the same would fall within the meaning of ‘cruelty’.

51. This allegation of taking away of jewellery, does not come within the scope of Section 498A IPC.

52. The FIR also makes broad claims that the Petitioners “*threatened me and my daughters*” and that “*intimate videos would be uploaded on the internet*”. These allegations are also uncorroborated, not supported by any *prima facie* evidence and reflect an afterthought to intensify the case of the Complainant.

53. From the FIR contents, the allegations are vague, general, and omnibus in nature, focusing primarily on unsubstantiated claims and broad threats without specific dates or circumstances.



54. Thus, the essential ingredients of Section 498A IPC are not made out from the Complaint made by Respondent No.2. The entire Complaint and the evidence collected during the investigations in the present matter, even if admitted *in toto*, would not be enough to prove an offence under Section 498A IPC. In light of the above findings, it is concluded that *the essential ingredients of Section 498A IPC are not satisfied in the present case.*

55. The Complaint and the subsequent proceedings emanating from FIR No. 73/2015 dated 22.01.2015 are therefore, manifestly an abuse of the process of law.

Allegations under Section 406 IPC:

56. The case of the Respondent No. 2 for asserting the offence of Criminal breach of Trust under Section 406 IPC is premised essentially on two grounds:

- (i) Unauthorizedly taking away money from joint account; and
- (ii) Removing of her jewellery worth Rs.40 lakhs from her almirah.

57. To comprehend these assertions, it would be relevant to first consider the contours of Section 406 IPC. Section 405 IPC defines the offence as under:

“Section 405. Criminal breach of trust.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation



of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

“Section 406. Punishment for criminal breach of trust.

*Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to **three years, or with fine, or with both.**”*

58. At this juncture, it is imperative to refer to the two foundational elements to constitute the offense of criminal breach of trust under Section 406 IPC: **first**, an **entrustment** of property, and **second**, a **dishonest misappropriation** of that property.

59. The term **entrustment** has been explained by the Apex Court in State of Gujarat vs. Jaswantlal Nathalal, (1968) 2 SCR 408, as under:

*“The term “entrusted” found in Section 405 IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter - see Velji Raghvaji Patel vs. State of Maharashtra [(1965) 2 SCR 429]. **Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust - see Jaswantrai Manilal Akhaney vs. State of Bombay [1956 SCR 483]. 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. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an “entrustment”.

60. Similarly, the Apex Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 SCC 591 held that the expression ***“entrusted with property”*** used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed, ***must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit.*** The same has been reiterated by the Apex Court in Delhi Race Club, (supra) which is reiterated in the recent case of Apex Court in the case of Paramjeet Singh, (supra).

61. The Respondent No.2/the Complainant/Nishi asserts that she was running a readymade garments business and deposited all proceeds into their joint account. She claims the Petitioner/Om Saran Gupta *withdrew funds without her knowledge and upon objection, subjected her to abuse.*

62. Evidently, the allegations in the Complaint *fail to specify the amounts withdrawn, the periods of withdrawal, or any documentary evidence (such as bank statements) supporting her claims of unauthorized removals.* Even if the averments are taken to be correct and true, then too, it does not amount to entrustment of property to the Petitioner.



63. In respect of the joint bank account, the very nature of joint ownership negates the concept of entrustment, as both account holders possess equal rights of withdrawal. The Complainant has not alleged any specific mandate, agreement, or fiduciary obligation restricting the Petitioner's right to operate the account. The Complainant's assertions in this regard, ***lacks essential ingredients of entrustment and dishonest misappropriation***, as required under Section 406 IPC, and instead reflects a generic financial dispute.

64. A significant portion of the Complaint focuses on the Complainant's claim that *all her jewellery, roughly valued at Rs. 40 lakhs*, was taken away by the Petitioner. It is alleged that upon repeated requests, he returned the jewellery only after two years. The jewellery was kept in an almirah, to which the Petitioner had access. On 09.11.2013, while the Complainant was in the Hospital for her daughter's *Appendix operation*, ***the Petitioner forcefully broke the lock of the almirah and took away all her jewellery*** and that he mortgaged these items without her consent. When confronted, he allegedly beat her and justified his actions by stating that he needed money and had mortgaged the jewellery with *Shyam Jewellers in Raghbir Nagar*. Upon her protest, the Petitioner called *Shyam Jewellers* and instructed them to return the jewellery to the Complainant, promising to clear the debt. However, when the Complainant approached the jewellers, they refused to release the jewellery. Subsequently, the Petitioner gave her an SBI *Cheque bearing No. 288037 dated 29.11.2013* for Rs. 40 lakhs, assuring her that she would receive the amount upon depositing the cheque. The said cheque, upon presentation, got dishonoured on 30.11.2013, after which further abuse and threats are alleged.



65. Thereafter, upon further confrontation, the Petitioner issued another SBI Cheque bearing No. 288038 dated 07.07.2014 for Rs. 40 lakhs, which was also dishonoured vide Return Memo dated 02.08.2014. The Complainant subsequently filed a Complaint under Section 138 NI Act, pertaining to the dishonour of the second cheque.

66. In the proceedings in CC No. 8807/2016 under Section 138 NI Act, following a full trial, the Ld. MM vide Judgment dated 20.07.2020 found that ***the Complainant not only failed to produce original bills, invoices, or credible third-party evidence to establish the possession, value, or entrustment of the alleged jewellery worth Rs. 40 lakhs, but also gave contradictory statements as to source, quantum, and ownership of the jewellery.*** Ld. MM further noted that no witness from the Shyam Jewellers, was examined and there were stark inconsistencies between the Complainant's statements in previous Complaints and her assertions in Court. *The Petitioner was acquitted in the Complaint under Section 138 NI Act.*

67. Furthermore, in the Complaint of Respondent No. 2, clearly, there are no any specific details regarding the weight, type, or inventory of the jewellery. Moreover as noted, there were no corroborative witnesses (*Witnesses from Shyam Jewellers or Muthoot Finance*) cited or examined in the Section 138 NI Act case to substantiate her claims.

68. Given that the Section 406 IPC offence in the present FIR is premised on the same allegations of entrustment and misappropriation of jewellery, the acquittal stands as a cogent judicial finding negating the very factual



substratum of entrustment, on which the offence of criminal breach of trust under Section 406 IPC, is alleged.

69. *Thus, no offence under Section 406 IPC is made out in the Complaint.*

Whether the circumstances justify quashing of the FIR?:

70. In the case of Digambar, (supra) it was re-emphasized that where the allegations made in the Complaint even if taken on the face value and accepted in their entirety, do not *prima facie* constitute a case against the accused, the quashing of proceedings would be justified. Only stating cruelty has been committed by the Appellants, would not amount to an offence under Section 498A IPC.

71. Recently, the Supreme Court in Sanjay D. Jain & Ors. vs. State of Maharashtra, Crl. Appeal arising out of SLP (Crl.) No.12584/2024 decided on 26.09.2025 (2025 INSC 1168), while quashing FIR under Section 377/498A/506 IPC, reiterated the settled principle that *where allegations in the FIR or complaint are vague and general without specific instances or particulars essential to constitute an offence, such FIRs do not disclose a prima facie case and are liable to be quashed*. The Court emphasized that even if the statements in the FIR are taken at their face value, if the essential ingredients of an offence like cruelty under Section 498A IPC are not made out with particularity, quashing is justified to prevent abuse of process.

72. The guiding tests in regard to the quashing of the FIR, had been succinctly stated in the case of State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 wherein it is observed that “*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; or 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, the FIR may be quashed.”

73. As discussion above in detail, there is not an iota of even a *prima facie* case of cruelty or of harassment of the Complainant by the Petitioner. There is also no element of entrustment made out from the facts alleged by the Respondent No.2, in her Complaint.

74. Though the Chargesheet has been filed in this Case but as noted above, that in itself cannot be a ground to deny the quashing and to refer the parties to try their luck before the Ld. Trial Court, especially when it is patently made out to be a case of ***abuse of process of law and is designed to settle other disputes between them***. The Chargesheet is thus, liable to be quashed, in view of the aforesaid proposition of law and the facts of this case.

Relief:

75. Thus, the present Petition is allowed and FIR No.73/2015 dated 22.01.2015 under Sections 498A, 406, 34 IPC registered at P.S. Vikas Puri along with the subsequent proceedings, is ***hereby, quashed***.



76. Accordingly, the pending Application(s), if any, are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 03, 2025

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