

**(1999) 05 AHC CK 0218****Allahabad High Court****Case No:** Criminal Revision No. 464 of 1994

Smt. Suman Upadhyay and  
Others

**APPELLANT****Vs**

State of U.P. and Others

**RESPONDENT****Date of Decision:** May 27, 1999**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 397, 398
- Dowry Prohibition Act, 1961 - Section 3, 4, 6
- Penal Code, 1860 (IPC) - Section 406, 498A

**Citation:** (1999) CriLJ 4657**Hon'ble Judges:** B.K. Sharma, J**Bench:** Single Bench**Advocate:** Sidarth Shukla, for the Appellant; A.G.A., Yogesh Agarwal and Ravindra Nath Keshari, for the Respondent**Final Decision:** Dismissed**Judgement****@JUDGMENTTAG-ORDER**

B.K. Sharma, J.

This revision has been preferred against the judgment and order dated 12-1-1994 passed by Sri D.C. Awasthi, the then II Additional Chief Judicial Magistrate, Bareilly in Criminal Case No. 1 of 1993 (Joyti Upadhyay v. Vinod Upadhyay and Ors.) under Sections 498A/406 I.P.C. and Sections 3/4 Dowry Prohibition Act, Police Station Prem Nagar, district Bareilly summoning the accused revisionists.

2. Heard the learned counsel for the accused revisionists and the learned A.G.A.
3. The facts, leading to this revision, are that Smt. Joyti Upadhyay, complainant opposite party No. 3 in this revision, filed a complaint on 4-1-1993 before the II Additional Chief Judicial Magistrate, Bareilly against Vinod Upadhyay, Rama Shanker

Updhayay, Bhanu Pratap Upadhyay, Smt. Indu Chaturvedi and Kamla Shanker Upadhyay, with the allegations that she was married to Vinod Upadhyay on 7-12-1989 at Bareilly according to Hindu rites that in the marriage, the father of the complainant had given Rs. 25,000/- in cash by way of draft, ornaments and other house hold effects valuing Rs. 1 lac by way of gift, that the suit case containing the ornaments and clothes had been handed over by the father of the complainant to her Jethani Smt. Suman and Nanad Indu after the marriage and the cash, which was received in Shagun, was paid to her Jeth Bhanu Pratap; that the draft of Rs. 25,000/- was handed over to her husband Vinod Upadhyay; that the other domestic goods such as bed, utensils as well as other house hold effects were handed over to these persons, that after the marriage, the complainant went to her in-laws' house and lived there but her father-in-law, mother-in- law, Jeth, Jithani and Nanad had started harassing and misbehaving with her on the ground of bringing less dowry; that for the said reason, her husband, father-in-law and mother-in-law had turned her out of the house by keeping her articles; that thereafter, the complainant gave birth to a son but even thereafter her husband or her mother-in-law and father-in-law had not come to meet her nor any money was sent for expenses; that on account of this, the complainant is facing great mental agony, as neither her husband nor her mother-in-law and father -in-law came there to bring her back nor they returned her goods and that she is living at the house of her father at Bareilly. In the complaint, it was also alleged by the complainant that a registered notice was sent on 7-10-1992 to the accused person to which no reply was received and that they digested the said amount of Rs. 25,000/- and other articles valuing to Rs. 1 lac and consequently, they may be summoned and necessary action be taken against them, i.e. the accused persons mentioned in the complaint.

4. The learned Magistrate recorded the statement of Smt. Jyoti Upadhyay u/s 200 of the Code of Criminal Procedure. The statements of Smt. Madhu Chandra as PW 1 and Devendra Nath Tandon as P.W 2 u/s 202 of the Code of Criminal Procedure were recorded by the learned Magistrate. Initially, the learned Magistrate being of the view that the offence under Sections 498A/406, I.P.C. and Section 6 of the Dowry Prohibition Act was made out only against the husband accused Vinod Upadhyay he ordered for summoning this accused alone and not any of the other accused 2 to 5 mentioned in the complaint vide his order dated 18-3-1993. Being aggrieved by this order, in so far as the learned Magistrate declined to summon the other accused persons mentioned in the complaint, the complainant Smt. Jyoti Upadhyay preferred Criminal Revision No. 110 of 1993 before the Sessions Judge, Bareilly. Their revision ultimately came for disposal before Sri Mohd. Abid, the then learned Additional Sessions/Special Judge, Bareilly. He took the view that a *prima facie* case of the offences under Sections 498A/406I.P.C. and Sections 3/4 of Dowry Prohibition Act was made out not only against the complainant's husband Vinod Upadhyay but was also made out against her father-in-law Rama Shanker Upadhyay, mother-in-law Smt. Chandrawati Devi, Jeth Bhanu Pratap Upadhyay, Jethani Smt. Suman Upadhyay

and Nanad Smt. Indu Chaturvedi and that there was sufficient ground for proceeding against them. The learned Additional Sessions Judge /Special Judge concerned also found that in the complaint no allegation had been made against Kamla Shanker accused. He also noticed the fact that some how Smt. Suman Upadhyay and the mother-in-law Smt. Chandrawati Devi were not mentioned in the complaint in the array of accused persons. The learned Additional Sessions Judge/Special observed in his judgment that at that stage the learned Magistrate had not to see whether the evidence given was sufficient to convict the accused persons or not but he has only to see whether on the evidence on record any *prima facie* case was made out against them or not and that being the legal position of the impugned order interference with the same was called for. He consequently allowed the revision vide his order dated 6-11-1993 and set aside the impugned order dated 18-3-1993 and returned the file to learned Magistrate concerned with the direction to make further enquiry in the case in the light of the observations made in the body of judgment and to pass proper legal orders by himself or entrust it to any Magistrate subordinate to him. Thereafter, the learned Magistrate, before whom the case came up at this stage, passed the impugned order date 12-1-1994. In this order, he made a reference to the remand order passed by the learned Additional Sessions Judge and mentioned that he heard the learned counsel for the complainant and perused the material on record. The learned Magistrate also mentioned in the order that in this view there is a *prima facie* case to summon the complainant's father-in-law Rama Shanker Upadhyay; mother-in-law Smt. Chandrawati Devi; Jeth Bhanu Pratap Upadhyay; Jethani Smt. Suman Upadhyay and Nanad Smt. Indu Chaturvedi for the offences under Sections 498A/406 I.P.C. and Sections 3/4 of Dowry Prohibition Act and decided them summoning as there was sufficient ground for proceeding against them. He also directed that the names of the Jethani Smt. Suman Upadhyay and mother-in-law Smt. Chandrawati Devi of the complainant Smt. Jyoti Upadhyay be entered in the complaint by way of amendment. He also directed summoning of all the accused-persons for. 16-2-1994. The present criminal revision has been preferred against this subsequent order dated 12-1-1994.

5. The learned counsel for the revisionists has raised several pleas before this Court. One of the pleas was that the learned Magistrate could not summon the accused-revisionists without taking further evidence after the remand order passed by the learned Additional Sessions Judge/Special Judge, Bareilly. Section 397 of the Code of Criminal Procedure empowers any Sessions Judge to call for and examine the record of any proceedings before any inferior criminal Court within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed. u/s 398 of the Code of Criminal Procedure, the Sessions Judge may direct the Magistrate to make further enquiry into any complaint. The direction for further enquiry does not mean that the Magistrate must take further evidence-oral or documentary, before passing further

orders in the case. The term "further enquiry" also means further consideration of the evidence. No exception can be taken to the observation of the learned Additional Sessions Judge/Special Judge that the material on record discloses a *prima facie* case and that there was sufficient ground for proceeding with the case and the Magistrate before whom the case came up for consideration after the remand, on a further consideration of the evidence on record in the light of the observations made by the learned Additional Sessions Judge/ Special Judge that was certainly binding on him and was legal and correct also rightly directed summoning of the accused revisionists. Thus there was nothing illegal or wrong in the impugned order passed by the learned Magistrate on 12-1-1994 for summoning the accused revisionists who have come before this Court by way of this revision. So this contention of the learned counsel for the accused-revisionists has no substance and is, therefore, rejected.

6. The next contention of the learned counsel for the accused-revisionists is that the learned Magistrate at Bareilly had no territorial jurisdiction to try the case as in the complaint except the marriage, the entire occurrence is said to have taken place at Gorakhpur. I have gone through the contents of the complaint. The contention of the learned counsel for the accused revisionists is obviously not correct. As per the complaint the entrustment, such as the draft, ornaments and other items, had been done at Bareilly itself at the time of marriage and so even if any breach of trust has been committed subsequently at another place, the complaint could be filed at Bareilly also where a part of the cause of action arose. The complaint could be legally filed at the place where a part of the cause of action arises. It may be that the cause of action in respect of another offence arose only at Gorakhpur where ill treatment etc. was done to the complainant as per the complaint but then whole transaction is to be seen and if a part of the cause of action as per the allegations in the complaint arose in his territorial jurisdiction, the Magistrate has jurisdiction to take the cognizance of all the different offences committed in the course of transaction even though some of them had been committed beyond his territorial jurisdiction. So this plea of the learned counsel for the accused-revisionists also fails.

7. Then the learned counsel for the accused-revisionists has tried to rely upon some material placed by him on the record of this revision by way of affidavit of Rama Shanker Upadhyay and the annexures filed therewith. These are extraneous materials for the purpose of this revision and cannot be looked into for determining the legality and propriety of the order passed by the learned Magistrate or the proceedings taken by him. There is nothing wrong and improper in the impugned order passed by the learned Magistrate and the matter rests there. The accused-revisionists are always free to raise their defence by way of oral or documentary evidence and also by way of cross-examination of prosecution witnesses, at the trial of the case. At this stage of summoning, these materials cannot be looked into.

8. For the reasons aforesaid, the revision fails and is dismissed. The stay order dated 23-3-1994 staying the proceedings in the criminal case is vacated. Let the record of the Court below be returned forthwith to the Court concerned along with a certified copy of this order by the registry by special messenger/courier and on the receipt of the record, the learned Magistrate shall proceed with the case according to law expeditiously.