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## Smt. Suman Upadhyay and Others Vs State of U.P. and Others

## Criminal Revision No. 464 of 1994

Court: Allahabad High Court

Date of Decision: May 27, 1999

**Acts Referred:** 

Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 202, 397, 398#Dowry Prohibition Act,

1961 â€" Section 3, 4, 6#Penal Code, 1860 (IPC) â€" 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. Jyoti 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 Upadhay 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 Barielly 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.