

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1265 OF 2017**

IN THE MATTER OF:

Rajesh Sharma and Ors.

... Appellants

VERSUS

State of U.P & Anr.

...

Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.
2, MRS. SNEHA RAJESH SHARMA**

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•	ANNEXURE R-1: A true copy of the complaint case no. 797/2013 filed by Respondent Wife under Sections 498A, 323, 504, 506 of the IPC read with Sections 3 and 4 of Dowry Prohibition Act dated 02.12.2013	

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PRELIMINARY SUBMISSIONS:

- That the present Counter Affidavit is being filed by Mrs. Sneha Rajesh Sharma, Respondent no. 2 (hereinafter the 'Respondent Wife') in Criminal Appeal No. 1265 of 2017, arising out of Special Leave Petition (Crl.) No. 2013/2017 *Rajesh Sharma & Ors. v. State of Uttar Pradesh & Anr.* This Hon'ble Court was pleased to render a judgment in the aforesaid Criminal Appeal on 27.02.2017. The Respondent Wife had not entered appearance earlier, as although she had received notice of the present proceedings, the Respondent Wife did not have adequate monetary and other resources to come to Delhi and hire a lawyer before this Hon'ble Court. The Respondent Wife has only recently got a job of an art teacher in a local school and earns a meagre Rs. 5000 per month and is living with her father and totally dependent on him. The father runs an *atta-chakki* and has limited resources.
- That the Respondent Wife got married to Mr. Rajesh Sharma, the Appellant No. 1 on 28th November 2012. After her marriage, she started residing with her husband, father-in-law, brother-in-law, sister-in-law and brother-in-law (hereinafter the 'Appellants'), who are also parties in this present Criminal Appeal. It is the case of the Respondent Wife that at the time of the wedding, her father had given dowry to the Appellant no. 1 and her in-laws as per his capacity, but the Appellants were not satisfied with the same and started abusing the Respondent Wife. Appellant no. 1 and the in-laws of the Respondent Wife further made a demand for dowry of Rs. 3,00,000/- and a car, which her family could not arrange. On 12th August 2013, the Respondent Wife and her father were made to sign on a judicial paper which stated that she is leaving her matrimonial house with her clothes of daily use, jewelry and other articles which were given by her father. She left the matrimonial house on 12th August 2013. Appellant No. 1 again took Respondent Wife to her matrimonial house approximately after one and half month from 12th August 2013. Respondent Wife was again taunted and tortured for dowry. Thereafter Appellant No. 1 on 10th November 2013 dropped the Respondent Wife at her maternal house where he gave her beatings and gave her a kick in the lower abdomen due to which Respondent No. 2 suffered from severe pain and fell unconscious. Respondent No. 2 was carrying a child at that time and due to the injury in her lower abdomen she suffered from severe pain. Respondent Wife narrated the incident to her father after gaining consciousness again. Respondent Wife went to file a police complain where she was informed that a medical examination had to be done before filing the police complaint. Respondent wife approached a private doctor for the treatment and later got the treatment in Sadar Hospital. On 23rd March 2014 a girl child was born to the Respondent Wife, while she was residing with her Father, in Jaunpur.
- That the Respondent Wife filed a complaint under Sections 498A, 323, 504, 506 of the IPC read with Sections 3 and 4 of Dowry Prohibition Act on 2nd December, 2013 before the Learned Additional Chief Judicial Magistrate (First Class), Jaunpur against the Appellant no. 1, and his family members (the Respondent Wife's father in law, mother in law, brother in law and sister in law). Criminal Case No. 797/2013 was registered against the Appellant no. 1 and his family members. Statement of the Respondent Wife was recorded under section 200 Cr.P.C. in which the Respondent Wife narrated the incidents of cruelty and violence faced by her at the hands of the Appellant no. 1 and his other family members. After considering her statement and the statements of PW1 Pradeep Kumar and PW2 Ajay Kumar Sharma recorded under Section 202, the medical report from woman hospital, pathology, district woman hospital and original ultrasound, the Learned Chief Judicial Magistrate (First Class) passed an Order

dated 14.07.2014 stating that the Appellant no. 1 had demanded a car and three lacs rupees and in not meeting demands he tortured the Respondent Wife. The Learned Magistrate held that torture is attributable against the Appellant no. 1 and not against the rest of the accused, who are also Appellant in the present Criminal Appeal. He further held that rest of the accused/Appellants have not committed any crime and they have not participated in the commission of the crime. Appellant no. 1 was summoned under Section 498A, 323 IPC read with Section 3 and 4 of the Dowry Prohibition Act. True translated copy is annexed as **Annexure R1 (Page – to -)**.

- Respondent Wife, filed a revision petition numbered 249/2014 in the Court of Learned Additional Session Judge/ Special Judge (ECA ACT), Jaunpur stating that the order passed by the Lower Court is illegal and contrary to law and facts as it has not considered the witnesses brought on the record and simply summoned one person. The Respondent Wife submitted that witness had supported that there was a prima facie case against all the Appellants and hence the rest of the Appellants should have been summoned. The Learned Additional Sessions Judge passed an order and held that the Magistrate is not supposed to evaluate the evidences brought on record as he used to do at the trial.
- In the present case, there is sufficient ground to summon all the Appellants to face trial and passed the order to the effect of setting aside the order dated 14.07.2014 and directed by order dated 03.07.2015 that the Learned Magistrate should give the opportunity of hearing to the Respondent Wife and take a decision afterwards. The Learned Chief Judicial Magistrate (First Class), Jaunpur, by order dated 18.08.2015, after considering the statement of the Respondent Wife and her witnesses concluded that the Appellant no. 1 and his family had prima facie committed offence under Section 323, 504, 506, 498A IPC along with Section 3 and 4 of the Dowry Prohibition Act and issued summons against the Appellant No. 1, Appellant No. 2 (Vinay Sharma), Appellant No. 3 (Jaywati Sharma), Appellant No. 4 (Praveen Sharma) and Appellant No. 5 (Priyanka Sharma) for trial.
- The Appellants filed a petition numbered CM 397 of 2016 under Section 482 Cr. P.C. before the Hon'ble High Court of Allahabad praying to quash the order dated 18.08.2015 passed by the Learned Chief Judicial Magistrate (First Class), Jaunpur. They made an additional prayer to stay Case Number 797 of 2013 pending in the Court of Learned Additional Chief Judicial Magistrate (First Class), Jaunpur. The Hon'ble High Court of Allahabad referred the matter to the Mediation & Conciliation Center of that Hon'ble Court. The Appellants and the Respondent Wife were directed to deposit a sum of Rs 10,000 /- by an Order 11.01.2016. The mediation report dated 04.05.2016 indicated that mediation between the parties failed. The Respondent wife has failed to obtain the mediation report. Then after considering the material on record and looking into the facts, the Hon'ble High Court by Order dated 18.01.2017 reasoned that at the stage of issuing process the Learned Court below is not expected to examine and access in detail the material placed on record, only this has to be whether prima facie cognizable offence is made out or not and concluded that the instant case was not rarest of rare where the power of quashing should be exercised and refused the prayer to quash the summoning order dated 11.01.2016. the Learned Trial Court was directed to conclude the trial expeditiously (within six month). The Appellant no. 1 and his family members filed a Special Leave Petition (Crl.) No. 2013 of 2017 against the order dated 18.01.2017 before this Hon'ble Court, wherein this Hon'ble Court was pleased to pass a judgment dated 27th July 2017.
- That the Respondent Wife is directly aggrieved by the aforesaid judgment dated 27th July 2017 of this Hon'ble Court, in as much as there is no resolution of the dispute at hand, which has in fact been prolonged by directing the parties to approach the concerned trial or other court for further orders in the light of the directions issued in the aforesaid judgment.

- That vide order dated 27th July 2017 states that the statutory procedure to be followed under section 498A IPC has been diluted, which will make access of justice difficult for the wives who are victims, such as the Respondent Wife.
- It is respectfully submitted that in any event, in so far as the Judgment dated 27th July 2017 is concerned, she had filed a complaint under Section 200 of the CrPC and a judicial forum after due application of mind has issued summons to the accused including members of the family. Therefore, this judicial order cannot be overridden by any other committee until set aside on merits and even then, being a complaint case, can only follow the procedure prescribed by the CrPC. It is respectfully submitted that only after a judicial forum has applied its mind that the summons had been issued and hence no question of misuse in registering an FIR arises. In the circumstances, in so far as the Respondent Wife is concerned, there is no putting the clock back and reverting the stage of approaching a family welfare committee.
- That the Respondent Wife was so far not represented by any counsel before this Hon'ble Court as she could not afford a legal representation in Delhi.
- That Appellants in their Special Leave Petition (Crl.) 2013 of 2017 has annexed as Annexure P-2 a copy of the Complaint Case No. 797 of 2013 dated 02.12.2013 under section 498A, 323, 504, 506 of IPC read with Section 3 and 4 of the Dowry Prohibition Act, which is wrongly translated. Respondent wife never lost her child which she was carrying and gave birth to a baby girl on 27.03.2014. Averments to the contrary in the translated Annexure P-2 are on account of a factually wrong translation done by the Appellants herein.
- The Respondent Wife has now been approached by the Appellants and is being asked to settle the matter in front of the family welfare committee.
- That all the accused had treated the Respondent wife with cruelty and the High Court had rightly held that the complaint against them cannot be quashed.
- That, given the fact that the Respondent Wife is directly aggrieved by the aforesaid judgment dated 27th July 2017 of this Hon'ble Court and the larger public interest involved, the Respondent Wife by means of the present reply, seeks permission of this Hon'ble Court to be allowed to be heard in the matter and assist this Hon'ble Court by placing all the relevant material on record and prays that the order dated 27th July 2017 be appropriately modified in light of these submissions and the matter be proceeded with afresh.

PARA WISE REPLY:

The para wise reply to the present Criminal Appeal is as follows:

- The contents of para a are not admitted and denied as the order dated 18.01.2017 of the High Court is correct and fair.
- The contents of para b are not admitted and hence denied because the Respondent wife has made allegations of cruelty against the Appellants No. 2 to 5 as she was residing with them after the marriage and they taunted and gave beatings to the Respondent Wife for demands of dowry which were not met by the Respondent wife and her father.
- The contents of para c are not admitted and hence denied because the Appellant No. 4 and 5 who are unmarried brother-in-law and unmarried sister-in-law, who resided in the same matrimonial house of the Respondent wife and treated her with cruelty in lieu of dowry demands hence their careers should not be treated as a shield to protect them from the legal action against them.
- The contents of para d are not admitted and hence denied because the Respondent wife in her complaint to the Magistrate has specifically levelled clear allegations of demanding dowry against Appellant No. 2 to 5 from herself and her father. More so the judgment referred (Ram Saran Varshney and Ors. vs. State of U.P and Anr.) does not apply to the present case as the facts and circumstances are different. The respondent wife never filed an FIR in the present matter, there were no closure report from the police which were not

considered by the High Court before passing the quashing order hence the same cannot be applied as a precedent in the present matter.

- The content of para e are not accepted and denied.
- The contents of para f are not admitted and hence denied because the Appellants have contributed to the torture and cruelty faced by the Respondent wife at her matrimonial house by actively participating in taunting and instigating the Appellant No. 1 who is the husband to give beatings to the Respondent wife and hence summoning them to face trial is just and fair.
- The contents of para g are not accepted and denied.
- The contents of para h are not admitted and hence denied because the Chief Judicial Magistrate (First Class), Jaunpur, by order dated 18.08.2015, after considering the statement of the Respondent wife and her witnesses concluded that the Appellant No. 1 to 5 (husband and his family) had prima facie committed offence under Section 323, 504, 506, 498A IPC along with Section 3 and 4 of the Dowry Prohibition Act as there was sufficient evidence to proceed against them and issued summons against the husband Rajesh Sharma, Vijay Sharma, Jaywati Sharma, Praveen Sharma and Priyanka Sharma for trial.
- The content of para I are not accepted and denied as the Respondent wife never filed an FIR in the present matter. A judicial body, after considering her complaint had passed orders of summoning to the Appellant No. 1 to 5 and hence the judgment rendered in Geeta Mehrotra and Anr. vs. State of U. P. and Anr. cannot be used as a precedent.
- The contents of para j are not accepted and denied.
- The contents of para k are not admitted and hence denied as Section 498A (b) states:

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 purpose of this section, “cruelty” means—

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.

A dowry of Rupees 3 Lacs and a car was demanded from the Respondent wife as well as her father by the Appellant No. 1 to 5, and when the respondent wife's father could not meet the demands, she was harassed by the Appellant No. 1 to 5. Hence the ingredients of Section 498A against all the Appellants have been disclosed.

The Respondent wife was beaten by the Appellant No. 1 causing hurt to her. Section 504 states:-

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Appellant No. 2 to 5 provoked Appellant No. 1 to give beating to the respondent wife, which cause her Hurt and hence the ingredients of Section 504 is disclosed against them.

Section 506 is the punishment for criminal intimidation where criminal intimidation is defined as:

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal

intimidation

As per the statement of Respondent wife, she was threatened by the Appellant No. 1 to 5 to the effect that if she is not able to meet the demands of dowry made by the Appellant No. 1 to 5, she will not be allowed to live peacefully in her matrimonial house, hence the offence under Section 503 is made out against the Appellant No. 1 to 5.

- The contents of para 1 are not accepted and denied as the Respondent wife has levelled specific allegations against the Appellant No. 1 to 5.

Filed By:

Shadan Farasat

Advocate for the Respondent no. 2

ANNEXURE – R1

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, FIRST, JAUNPUR
Complaint Case No. 797 Year : 2013

Name and address of the Complainant :

Sneha Sharma wife of Rajesh Sharma,
Age – about 28 years
Daughter of Ajay Kumar Sharma
Resident of Mohalla – Miyanpur
Police Station – Line Bazar, Jaunpur

Name and Addresses of the Accused Persons :

- (1) Rajesh Sharma S/o Vijay Sharma, age about 33 years
 - (2) Vijay Sharma S/o Murari Sharma, age about 57 years
 - (3) Jaiwati Sharma W/o Vijay Sharma, Age about 52 years.
 - (4) Parveen Sharma S/o Vijay Sharma, age about 22 years.
 - (5) Priyanka Sharma D/o Vijay Sharma, Age about 24 years.
- R/o Mo. 171/02, South Gamri Extension, Som Bazar, Sadhey Char Pusta, Police Station – Bhajanpura, Delhi-110053.

Detail of incident :

Beginning from Dated- 29.11.12 to Dated – 10.11.2013
Time : 3 O' clock in the day.
Place – Miyanpur, Police Station – Linebazar, Jaunpur.

Under Section :

498A, 323, 504, 506 I.P.C. and ¾ of D.P. Act

Under Section :

Line Bazar, Jaunpur.

Name and Address of the Witnesses:

- (1) Ajay Kumar
- (2) Arvind
- (3) Pardeep
- (4) Harish
- (5) Indu
- (6) Mayanktosh
- (7) Medical Officer, District Women Hospital, Jaunpur.
- (8) Radiologist, District Women Hospital, Jaunpur.
- (9) Pathologist, District Women Hospital, Jaunpur.
- (10) Record Keeper, Office of Superintendent of Police, Jaunpur.
- (11) Many other persons.

Sir,

The Complainant while submitting the complaint respectfully submit as under:-

Para - 1- That the Applicant resident of Miyanpur, Police Station - Linebazar, Jaunpur is a peace loving citizen. The marriage of the Applicant was solemnized on dated 28.11.2012 as per Hindu Religious Theology, customs, in the presence of family members with Rajesh Sharma son of Vijay Sharma as stated above. In the marriage, the father of the Applicant as per his status had given the dowry. In the marriage, the Applicant after departure from her parental house went to her in-laws house. From that time, her husband Rajesh Sharma, father-in-law Vijay Sharma, mother-in-law Jaiwati Sharma, brother-in-law Parveen Sharma, sister-in-law Priyanka Sharma the above were not satisfied with the dowry received in the marriage and used to give taunting of bringing less dowry. They were demanding rupees three lakh and car in the dowry. The Applicant requested that her parents are poor persons, they will not be able to give so much dowry, then these persons were afflicting her. The Applicant was bearing all such things and remained continue to comply her wife religion.

Para - 2- That the Applicant in the month of January after departure came to her parental house and stated all things to her parents. Again, in the month of April, 2013, the Applicant after departure alongwith Rajesh Sharma went to her in-laws house. The family members of her in-laws house again repeated their demand of Rupees Three Lakh and car. On expressing her inability, all persons done beating with her. The Applicant due to poverty remained bearing all such. The father of the Applicant Hari son of Satyapal, resident of Khatauli, Mujaffarnagar went to taking her daughter then the family members of her in-laws again repeated their demand of Rupees three lakh and car and on dated 12.08.2013 after getting the signatures of the Applicant and her father on simple Judicial Paper departure her from in-law's house. And said that whenever you may come, come after with Rupees three lakhs and car. After about one and half month Rajesh Sharma came again and taken her after her departure and said to the

father of the Applicant that after making the arrangement of Rupees three lakh and cause to reach the same. The father of the Applicant expressed his incapability.

Para - 3- That all the above family members of the in-laws of the Applicant like always by bad abusing used to beat and making demand of Rupees three lakhs by beating on dated 10.11.2013 at 3.00 P.M. only in the wearing cloths the Applicant was got reached in her parental house through Rajesh Sharma. And before the family members of the Applicant, Rajesh Sharma hit the leg in the stomach of the Applicant and said that if you want to come in the in-laws house then come to in-laws house by taking three lakh rupees and car in the dowry otherwise you may die here, we will solemnize another marriage.

Para - 4 - That the Applicant is pregnant and due to unbearable pain in the stomach, she became senseless. On coming in the sense, narrated all things to the family members of her house. This incident was seen by Arvind, Pardeep, Mayanktosh of the mohalla and so many other persons and mediated. The Applicant with aher father went to Miyanpur Police Station then Diwan Ji/Station House Officer said that come after medical examination. Then the Applicant went to hospital and the Doctor said come by taking the police. The Complainant due to unbearable pain was worried. Then the Applicant got her treatment done from the private Doctor. On not getting any relief, the Applicant got her treatment from the hospital. On getting relief, the Applicant gave information to the higher officers. On not taking any effective action, the Applicant is filing this complaint.

Para - 5 - That in the in-laws house of the Applicant, her husband, father-in-law, mother-in-law, brother of her husband and sister of her husband has committed serious crime by beating her for dowry and got reaching to her parental house. It is very necessary to punish these persons after summoning them.

P R A Y E R

Therefore, it is prayed before your good honour that the above stated accused persons may kindly be summoned and punish them so that justice could be done.

Dated:- 02.12.2013

APPLICANT
Sd/- Sneha Sharma