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RAM SARAN VARSHNEY AND OTHERS

v.

STATE OF UTTAR PRADESH AND ANOTHER

(Criminal Appeal No. 128 of 2011)

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FEBRUARY 05, 2016

**[JAGDISH SINGH KHEHAR AND N.V. RAMANA, JJ.]**

*Code of Criminal Procedure, 1973 – s.482 – FIR by respondent No.2 – Against the appellants – Investigations and further investigations in the matter – Closure reports submitted by three investigating officers – After investigation by the fourth investigating officer, charge-sheet u/ss. 498A and 506 IPC r/w. ss. 3/4 of Dowry Prohibition Act, 1961 – Cognizance of the charge-sheet taken by the Chief Judicial Magistrate by order dated 12.5.2008 – Revision petition challenging order dated 12.5.2008 dismissed by order dated 1.7.2008 – Petition by appellants u/s.482 for quashing the charge-sheet and the orders dated 12.5.2008 and 1.7.2008 – Petition dismissed by High Court – On appeal, held: In the facts of the case, it cannot be said that during fourth investigation, whereafter charge-sheet was framed and in the order passed by the Chief Judicial Magistrate taking cognizance of the charge-sheet, second and third closure reports were not taken into consideration – Therefore, the charge-sheet and order dated 12.5.2008 need not be interfered with – However, in the facts, the case of harassment is not made out against appellant Nos.4, 5 and 6 (the sisters-in-law of respondent No.2) – The criminal proceeding against them is liable to be quashed – Trial court directed to take up and dispose of the proceedings only against appellant Nos. 1 to 3 (i.e. parents-in-law and husband of respondent No.2) – Penal Code, 1860 – ss. 498A and 506 – Dowry Prohibition Act, 1961 – ss. 3 and 4.*

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**Disposing of the appeal, the Court**

**HELD: 1.** In the facts of the case, it is apparent that while passing the order dated 6.9.2006 (whereby further investigation was ordered), the Chief Judicial Magistrate had duly taken into consideration the second Closure Report dated 10.07.2003. The

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investigation leading to the third closure report dated 27.2.2007 was clearly in violation of an express judicial order to the contrary, the same is a nullity in law, and cannot be accepted. Therefore, the plea of the appellants that during fourth investigation as well as by the Chief Judicial Magistrate, the Second and Third Closure Reports were not taken into consideration, cannot be accepted as a justifiable plea in law, insofar as the present controversy is concerned. [Paras 19 & 22][480-G; 840-G; 481-G-H]

2. Appellant Nos. 4, 5 and 6 are all sisters-in-law of respondent No.2. They are all married and living independently. Thus, they had no concern with the relationship of respondent No.2 with appellant Nos. 1 to 3. No clear allegations have been levelled by respondent No.2 against any of them. The only submission of respondent No.2, during the course of hearing was, that her three sisters-in-law had visited the matrimonial house of respondent No.2, on two occasions. The two occasions were for celebration, and cannot be treated as occasions where they harassed respondent No.2. In the absence of any material on the record relating to harassment on the above two occasions, the proceeding initiated against appellant Nos. 4, 5 and 6 was not justified. The same deserves to be quashed. [Para 23][482-B-G]

3. Trial Court directed to take up and dispose of the proceedings under Sections 498A and 506 IPC r/w. Sections 3/4 of the Dowry Prohibition Act, against appellant Nos. 1 to 3 only. [Para 24] [482-G-H; 483-A]

*Vinay Tyagi vs. Irshad Ali alias Deepak and others* 2012

(13) SCR 1005 : (2013) 5 SCC 762 – referred to.

#### Case Law Reference

2012 (13) SCR 1005 referred to. Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 128 of 2011

From the Judgment and Order dated 01.12.2008 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Misc. Case No. 2463 of 2008

Huzefa Ahmadi, M. Shoeb Alam, Shahrukh Alam, Rohan, Ujjwal Singh for the Appellants.

A Pawan Shree Aggarwal, Pragati Neekhara for the Respondent.  
Sonia Gupta, -In-Person

The Judgment of the Court was delivered by

**JAGDISH SINGH KHEHAR, J.** 1. The challenge raised in  
B the instant appeal is, as against the order dated 7.5.2008, namely, the  
charge sheet wherein the appellants before this Court have been  
proceeded against under Sections 498A and 506 of the Indian Penal  
Code, as also, under Sections 3/4 of the Dowry Prohibition Act. A further  
challenge has also been raised, as against the order dated 12.05.2008  
C (passed by the Chief Judicial Magistrate, Lucknow), taking cognizance  
of the charge sheet, filed against the appellants.

2. It is essential to narrate the facts leading up to the controversy.  
In this behalf, it would be relevant to mention, that Mukul Gupta - appellant  
no.3 was married to Sonia Gupta - respondent no.2 on 11.06.1997. Ram  
Saran Varshney - appellant no.1 and Saroj Varshney - appellant no.2 are  
D the father-in-law and mother-in-law respectively of respondent no.2.  
Appellant nos. 4, 5 and 6 are the sisters-in-law of respondent no.2.

3. A girl child was born to appellant no.3 and respondent no.2  
from their wedlock on 9.12.2000. Even though it is alleged, that appellant  
no.3 and respondent no.2 lived in the matrimonial home at Pune till  
E 30.10.2001, it is the case of the appellants before this Court, that  
respondent no.2 left her matrimonial home on 30.10.2001. It is also  
alleged, that on 15.03.2002, respondent no.2 forcibly attempted to enter  
the house of Ram Saran Varshney and Saroj Varshney (i.e. her parents-  
in-law) at Lucknow. Consequently, appellant nos. 1 and 2 initiated civil  
F proceedings, to restrain respondent no.2 from entering their house. By  
an order dated 15.03.2002, the District Judge, Lucknow granted the  
necessary restraint order, in favour of appellant nos. 1 and 2. In sum  
and substance, respondent no.2 was restrained from forcibly entering  
into the house allotted to appellant no.1, namely, C-79, Butlar Palace  
Colony, PS Hazratganj, Lucknow, without the permission of the Court.

G 4. It seems, that the relationship between the parties were not  
amicable. It is therefore, that appellant no.3 - Mukul Gupta filed a petition  
under Section 13 of the Hindu Marriage Act, 1956, seeking divorce from  
respondent no.2 - Sonia Gupta. During the course of hearing, it was the  
contention of the learned senior counsel for the appellants, that as a  
H retaliatory act to the divorce petition filed by appellant no.3 - Mukul

Gupta, respondent no.2 - Sonia Gupta registered a first information report bearing Case Crime No. 326 of 2002 at Police Station Shiv Kutti, Allahabad, under Sections 498A and 506 of the Indian Penal Code, read with Sections 3/4 of the Dowry Prohibition Act. It was alleged by respondent no.2 in the above first information report, that the appellants were harassing her. Investigation in the matter, consequent upon the registration of the first information report was handed over to Inspector - Krishan Pal Singh. Apprehending arrest, based on the allegations levelled by respondent no.2 against the appellants, they approached the High Court of Judicature at Allahabad, by filing Writ Petition (MB) No. 2600 of 2002. It is not a matter of dispute, that the High Court stayed the arrest of the appellants.

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5. Krishan Pal Singh, having investigated into the matter, filed a closure report dated 27.4.2003. The instant report shall hereinafter be referred to as the "First Closure Report". The text of the aforesaid closure report is reproduced hereunder:

"It is stated that on 10.04.2002 on the information of the complainant to PS Shivkutti, Allahabad, after registering a case, Sh. K.P. Singh, ASI, PS Hazratganj, started investigation and investigated the matter by CO, Hazratganj. Thereafter, I conducted the investigation and after thorough investigation and the statements of the witnesses and perusal of the record, no substance has been found in the allegations. Moreover, the dispute occurred due to the personal differences and egoism between them. The accused has earlier filed a case of dissolution of marriage and in a fit of revenge the complainant filed an FIR. On perusal of the evidences, no dowry case, as alleged to have been made out. Therefore, the final report is closed due to lack of evidences by the investigation. Final Report be accepted."

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6. Respondent no.2 - Sonia Gupta, it seems, expressed dissatisfaction with the investigation carried out by Krishan Pal Singh. It is therefore, that she addressed a representation to the Superintendent of Police, City (East), Lucknow, requiring him to order further investigation, through some other police station. In this context, it would be relevant to notice, that the Superintendent of Police ordered further investigation by the Station House Officer, Police Station Hussainganj. Accordingly, Badan Singh conducted further investigation. Having carried out the investigation, Badan Singh also submitted a closure report dated

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A 10.07.2003. The instant report shall hereinafter be referred to as the  
“Second Closure Report”. The text of the same is being extracted  
hereunder:

B “I perused the case diary maintained by Sr. SI and former Ios and  
considered the same carefully. I have also considered the  
statements maintaining the case diary and contents of the  
annexures. I also considered the statements of complainant and  
her family members. The complainant and her family members  
have only stated orally regarding the demand of dowry for  
demanding a sum of Rs. 10 lakhs and no evidence has been  
produced either by the complainant or her family members. Beside  
C it, there is no independent and fair evidence has been produced to  
substantiate that the money has been demanded in dowry. The  
complainant with her free will stayed with her husband in Australia,  
America, Singapore and Pune for years. It is a dispute of ego  
between the wife and husband has the complainant belongs to a  
D well to do and prosperous family and also an educated lady and  
therefore she does not consider anything less than her husband.  
Beside it, her husband Sh. Mukul Gupta is a son of an IAS officer  
and working in high ranking as Director. He filed a divorce case  
in the Family Court, Lucknow, as he could not get proper behaviour  
from her wife towards himself and towards his family members.  
E The complainant has filed an FIR to press her husband to withdraw  
the case and force her to live with him and therefore she has  
lodged an FIR of demand of dowry. The former IO, Sh. C.L.  
Sachan, SI has considered each and every point and statement of  
complainant and her family members and after examining and  
F carrying on the investigation submitted the final report. After  
perusing the report of former IO and statements of other  
witnesses, I am entirely satisfied of the investigation carried out  
by the former IO and in my considered opinion nothing has been  
wrong in the investigation carried out by the former IO which  
requires further investigation therefore, I am entirely satisfied with  
G the investigation carried out by the former IO and therefore present  
final report is being filed and therefore it may be accepted.”

7. Sonia Gupta - respondent no.2, filed a protest petition before  
the Chief Judicial Magistrate, Lucknow, against the filing of the First  
Closure Report dated 27.4.2003. The aforesaid protest petition was

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filed on 17.07.2006. Having taken into consideration the issues canvassed by respondent no.2, the Chief Judicial Magistrate, Lucknow, ordered further investigation vide order dated 06.09.2006. A

8. Dissatisfied with the order dated 6.9.2006, Ram Saran Varshney - appellant no.1, and Saroj Varshney - appellant no.2 filed Criminal Revision Petition No. 378 of 2006 before the Sessions Judge, Lucknow. By an order dated 7.11.2006, the revisional Court stayed the order passed by the Chief Judicial Magistrate, Lucknow, dated 6.9.2006 (whereby she had ordered further investigation in the matter). B

9. Despite the fact, that the order passed by the Chief Judicial Magistrate, Lucknow, dated 6.9.2006 had been stayed by the revisional Court, further investigation continued to be carried on, by yet another investigating officer, namely, N.K. Bajpai. After completing investigation, he also submitted a closure report dated 27.02.2007. The instant report shall hereinafter be referred to as the "Third Closure Report". It is not necessary to extract the whole of the report. Accordingly, a relevant part thereof is being reproduced hereunder: C D

"...Accused no. 3 Mukul Gupta is posted in London. He was contacted on 8.2.2007 on return to Lucknow. His father Sh. R.S. Varshney and mother Smt. Saroj Varshney are now residing at their residence situated at Sitapur Road, Sri Nathji Vihar Colony. They were also contacted and they told that the complainant letter dated 14.2.2002 written by Sh. D.D. Varshney to Distt. Magistrate is a forged one as such complainant letter have never been received in the District Magistrate's office. In this connection has produced a proof on 8.8.2002 and a copy of that has been submitted. Mukul has also told that he had got prepared a bank draft for Rs. 2,50,000/- in the name of Sonia and as a maintenance allowance during the divorce proceedings, Rs. 5000/- per month has been given w.e.f. April 2003. He has also given a certified copy of the statement of Sonia which has been recorded by Sonia in Case No. 365/02 under Section 125 Cr.PC before the Court, Allahabad. In which Sonia has accepted that Mukul has got prepared a FD and the maintenance allowance @ Rs. 5000/- per month is being received by her. He has also confessed that there were strained relationship between her and Mukul and in between she used to apologise from Mukul. She has also confessed that on 9.2.2002 she had sent an e-mail to Mukul in which she has mentioned orally that his E F G H

A family has demanded dowry and in case of non receipt of Rs. 10 lakhs, she will be harassed and tortured. Regarding the demand of dowry, no evidence or independent witness has been produced by the complainant or her family members. Besides it, none has mentioned about the demand of Rs. 10 lakhs as dowry. The Australia, America, Singapore and Pune. The dispute has taken place due to egoism of both husband and wife being belonged to a well to do and prosperous family because the complainant was borne in a well to do and prosperous family and got higher education of Allahabad University and she is not less than, in any way, her husband. Sh. Mukul Gupta is also son of an IAS officer and is also posted abroad on a higher post. He has also filed a divorce case before the Family Court due to not getting good behaviour from her wife towards him and his parents. The wife has also filed a dowry case against the husband and his family members with a view to withdraw the divorce case and compel to live her husband with her. After analyzing the investigations conducted by the previous IO Sh. C.S. Sachan, SI and Sh. Badan Singh, Sr. SI, PS Hussainganj on each and every points of the allegations leveled by the complainant and her family members, the IO has finished the final report. I also agree with the previous investigations conducted by the previous IOs. No point has been left unattended which require further probe, as per my knowledge. Therefore, I agree with the previous investigation. Final report may be accepted.”

10. It would also be relevant to mention, that the revision petition filed by the parents-in-law of respondent no.2, assailing the order of further investigation, came to be dismissed on 1.3.2008. The said order, it seems, attained finality, as the pleadings do not indicate any further action on the part of the appellants in the matter.

11. Learned senior counsel for the appellants, has expressly invited our attention to the fact, that after the submission of the Third Closure Report, no direction was given by any Court for conducting any re-investigation/further investigation in the case. It was submitted during the course of hearing, that no further investigation was ordered to be conducted at the hands of any senior police officer also. Yet, at the back of the appellants, further investigation into the first information report lodged by respondent no.2, as far back as on 10.4.2002, was carried out,

even after the submission of the Third Closure Report. It was sought to be pointed out, that the aforesaid investigation came to light, when Sonia Gupta - respondent no.2 moved an application before the Chief Judicial Magistrate, Lucknow, seeking the status of investigation, pursuant to the directions issued by her on 6.9.2006, directing further investigation into the matter. While taking cognizance of the said application, the Chief Judicial Magistrate, Lucknow, by an order dated 27.03.2008, directed the officer in-charge to file an action taken report. It was at that juncture, that further investigation into the matter, was taken up by yet another investigating officer, namely, Uma Shankar Tripathi.

12. Having completed the investigation, the fourth Investigating Officer-Uma Shankar Tripathi filed a charge sheet dated 7.5.2008. The contents of the above charge sheet are reproduced below:

“Above mentioned prosecution dated 10-04-2002 has been registered on the statement of complainant Smt. Sonia Gupta, whose investigation was first carried out by Sh. Pankaj Gautam C.O. PS. Hazrathganj, S.I. KP Singh, S.I. CL Sachan, and S.I. SK Bajpai. All the investigating Officers after investigation submitted final report through F.R. 207. However, the Hon’ble Court passed an order on the petition of the complainant for investigation under Section 178 CrPC. In pursuance of the Court Order investigation was started.

On the basis of the statement of the complainant, witness statements, charge sheet No. 203/08 is being filed against the accused persons in column no. 3 under sections 498-A/506 IPC and Dowry Protection Act, after cancelling the previously filed final reports. Kindly consider the evidence and take action as per law.

It is noteworthy that by the accused persons have been granted a Stay on Arrest by the Hon’ble High Court. The investigation is being concluded. Charge sheet is filed against all the accused.”

Consequent upon the filing of the aforesaid charge sheet before the Chief Judicial Magistrate, Lucknow, cognizance was taken on 12.5.2008, and the appellants were summoned to face trial. The above order is being reproduced hereunder:

“Today, the PS Hazratganj in Crime Case No. 326/02 after

A investigation, chargesheet has been issued against the accused(s)  
Ramsaran Varshney, Smt. Saroj Varshney, Mukul Gupta, Smt.  
Bhawna Varshney, Smt. Renu Gupta, Smt. Tunika Jaiswal under  
Sections 498-A/506 IPC and Dowry Prohibition Act. Case diary  
was perused. Sufficient grounds are for challans. Accused are  
B challaned. Case is registered. To appear on 14.5.2008 as 14.5.2008  
has already been fixed. To appear on the fixed date.”

13. The appellants filed another revision petition challenging the  
order dated 12.5.2008, taking cognizance, before the Sessions Court,  
Lucknow. The Sessions Judge dismissed the revision petition filed by  
the appellants on 1.7.2008.

C 14. The appellants then approached the High Court of Judicature  
at Allahabad, by filing Criminal Miscellaneous Case No. 2463 of 2008  
under Section 482 of the Code of Criminal Procedure, seeking quashing  
of the charge sheet dated 7.5.2008, the order passed by the Chief Judicial  
Magistrate dated 12.5.2008, and the order passed by the Sessions Judge  
D dated 1.7.2008. The impugned order came to be passed by the High  
Court on 1.12.2008, when the challenge raised by the appellants before  
the High Court, was rejected.

15. The first contention advanced at the hands of the learned  
senior counsel for the appellants was, that the charge sheet dated 7.5.2008,  
E and the order taking cognizance dated 12.5.2008 were cryptic in nature.  
It was the vehement contention of the learned senior counsel for the  
appellants, that the Fourth Investigating Officer - Uma Shānkar Tripathi,  
as also, the Chief Judicial Magistrate, Lucknow, had not taken into  
consideration the earlier closure reports, and as such, the charge sheet  
F dated 7.5.2008, as also, the order dated 12.5.2008 taking cognizance,  
were not sustainable in law. Insofar as the instant aspect of the matter  
is concerned, learned senior counsel placed reliance on a decision of this  
Court rendered in the case of Vinay Tyagi vs. Irshad Ali alias Deepak  
and others (2013) 5 SCC 762. Our attention was expressly invited to  
the following observations recorded in the above judgment:

G “41. Having discussed the scope of power of the Magistrate under  
Section 173 of the Code, now we have to examine the kinds of  
reports that are contemplated under the provisions of the Code  
and/or as per the judgments of this Court. The first and the  
foremost document that reaches the jurisdiction of the Magistrate

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is the first information report. Then, upon completion of the investigation, the police is required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the court. It is the record of the case and the documents annexed thereto, which are considered by the court and then the court of the Magistrate is expected to exercise any of the three options aforesaid. Out of the stated options with the court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the Magistrate to direct "further investigation" is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code.

49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of

A the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct “further investigation” and/or to file a “supplementary report” will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

B 53. The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173(2) of the Code. This rule is subject to only the following exceptions:

C (a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

D (b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on “fresh investigation” or “reinvestigation” or any part of it be excluded, struck off the court record and be treated as non est.”

E (emphasis is ours)

F 16. There is no serious ambiguity in the submission advanced by the learned senior counsel representing the appellants. On a perusal of charge sheet dated 7.5.2008, and the order taking cognizance dated 12.5.2008, it is apparent, that the Second and the Third Closure Reports were apparently not taken into consideration. In the above factual position, there would be no difficulty for us to accept the contention advanced at the hands of the learned senior counsel for the appellants. The submission made by the learned senior counsel for the appellants, has however been strenuously contested on behalf of the learned counsel for the State of Uttar Pradesh, as also, on behalf of respondent no.2, who has entered appearance in person.

G 17. Insofar as the Second Closure Report is concerned, it was the submission of the learned counsel for the respondent-State, that the same must be deemed to have been expressly taken into consideration, when

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consequent upon the filing of the First Closure Report dated 27.4.2003, the Chief Judicial Magistrate, Lucknow ordered further investigation on 6.9.2006. To support the instant submission, learned counsel for the respondent submitted, that the solitary contention advanced on behalf of the appellants, in the challenge to the order dated 6.9.2006 is noted in paragraph 6 in the order passed by the Additional Sessions Judge, Special Court, Lucknow dated 1.3.2008. Paragraph 6, aforementioned, is reproduced below:

“6. The only basis taken in the Revision is that the further investigation done by the investigating officer S.S.I., Shri Badan Singh Police Station Hussainganj, was not considered by the Chief Judicial Magistrate who passed the disputed order. In this context, it is worthwhile mentioning that the Final Report on the orders of further investigation was returned on its own level by the Police Superintendent (East), Lucknow, on which from 29.06.2003 S.S.I., Badan Singh started the investigation and noted the supplementary Case Diary. On 10.07.2003 the Final Report which was forwarded by the previous investigating officer, that only was accepted by S.S.I. Badan Singh after inspecting the case diary and studied the mentioned statements and documents and then according to Section 173(8) Cr.P.C. forwarded the result of further investigation. S.S.I. Shri Badan Singh during further investigation did not mention any statement of the witnesses himself, but relying on the statements mentioned of the previous investigating officer submitted his result.”

(emphasis is ours)

While dealing with the above solitary contention on behalf of the learned counsel for the appellants, the Sessions Court, while rejecting the appellants’ claim, recorded as under:

“10. During the Revision, along with affidavit 18-B in Hon’ble High Court, Allahabad, Lucknow Bench, Lucknow the certified photocopy of the writ petition No.6588/MB/2006 instituted by the accused/revisionists was made available, by which it was applied that during investigation by the police station Hazratganj the police will not arrest the accuseds and also it has been requested to dismiss the First Information Report registered by the complainant. Also relying on the judgment passed by the Hon’ble High Court in

A Writ Petition No.2600/2002 dated 15.05.2002, the order was affixed  
 with the writ petition according to which during the investigation  
 of Crime No. 326/2002 under sections 498A, 506 I.P.C. and of  
 Dowry Prohibition Act, police station Hazratganj, was arrest  
 stayed of the revisionists/accused. District Court, Lucknow Court  
 B by its order dated 15.03.2002 passed an injunction against the  
 respondent/complainant. This order was also made available in  
 form of 18-B/37 and 39. Order passed by the Hon`ble High Court,  
 Allahabad dated 18.10.2006 (18-B/51) was made available by  
 which during the investigation the arrest of the revisionists were  
 stayed by the Hon`ble High Court, Allahabad therefore the accused/  
 C revisionists are not adversely affected by the disputed order dated  
 06.09.2006 directing for further investigation. Since at the time of  
 passing the aforesaid order the further investigation conducted by  
 the S.S.I., Shri Badan Singh was before the Chief Judicial  
 D Magistrate and also no other ground has been taken in the Revision,  
 hence there is no ground to interfere in the disputed order. The  
 Revision is liable to be dismissed.”

(emphasis is ours)

18. A perusal of the submission made at the behest of the appellants,  
 and the order passed by the Sessions Judge, according to the respondents,  
 E leave no room for any doubt, that the Sessions Judge, while rejecting the  
 solitary contention advanced at the hands of the appellants, arrived at  
 the conclusion, that the Second Closure Report dated 10.07.2003, had  
 duly been taken into consideration by the Chief Judicial Magistrate,  
 Lucknow. The aforesaid finding recorded by the Sessions Judge in the  
 order dated 1.3.2008, was not assailed by the appellants, and therefore  
 F attained finality.

19. Without repeating the contention advanced at the hands of the  
 learned counsel for the respondent, we are satisfied, that the submission  
 advanced is wholly justified and deserves to be accepted. In the above  
 view of the matter, we hereby hold, that while passing the order dated  
 G 6.9.2006, the Chief Judicial Magistrate, Lucknow, had duly taken into  
 consideration the second Closure Report dated 10.07.2003.

20. Insofar as the submissions advanced at the hands of the learned  
 senior counsel for the appellants is concerned, the only remaining  
 contention is, that the concerned authorities had not taken into  
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consideration the Third Closure Report dated 27.02.2007, either at the time of investigation, whereafter the Fourth Investigating Report was submitted on 23.4.2008, or at the time of submission of the charge sheet on 7.5.2008, and even at the time of taking cognizance at the hands of the Chief Judicial Magistrate, Lucknow on 12.5.2008.

21. When confronted with the second submission, as has been noticed in the foregoing paragraph, learned counsel for the respondent pointed out, that the Third Closure Report was based on the order of the Chief Judicial Magistrate, Lucknow dated 6.9.2006, whereby further investigation was ordered. It was submitted on behalf of the respondent, that in the revision petition filed by the appellants themselves (before the Sessions Judge, Lucknow), further investigation ordered by the Chief Judicial Magistrate, Lucknow, was stayed on 7.11.2006. In view of the above restraint order, passed by the Sessions Judge, Lucknow, no further investigation could have been carried out, after the order dated 6.9.2006 had been passed. It is also the pointed contention of the learned counsel for the respondent, that the Third Closure Report was submitted on 27.02.2007, whereas the interim order passed on 7.11.2006 came to be vacated only on 1.3.2008, when the criminal revision petition filed by the appellants was dismissed, by the Sessions Judge. In sum and substance, it was the contention of the learned counsel for the respondent, that the entire investigation leading to the passing of the Third Closure Report dated 27.2.2007, was a nullity in law.

22. We have no doubt whatsoever, when the Third Closure Report is based on the direction issued by the Chief Judicial Magistrate, Lucknow, ordering further investigation. The aforesaid order passed by the Chief Judicial Magistrate, Lucknow, came to be stayed by the Sessions Judge, Lucknow on 7.11.2006, and the said order continued till 1.3.2008 (when the criminal revision petition filed by the appellants came to be dismissed). In the meantime, during the subsistence of the restraint order (staying investigation), the investigation was completed and the third investigating officer – N.K. Bajpai submitted the Third Closure Report dated 27.2.2007. Since the above investigation leading to the closure report dated 27.2.2007 was clearly in violation of an express judicial order to the contrary, in our considered view, the same is a nullity in law, and cannot be accepted. In view of the conclusion recorded hereinabove, we are satisfied, that the contention advanced at the hands of the learned senior counsel for the appellants, that the Second and Third Closure

- A Reports were not taken into consideration, cannot be accepted as a justifiable plea in law, insofar as the present controversy is concerned. The same is accordingly rejected.

23. Despite our conclusion recorded hereinabove, in respect of the first contention advanced by the learned senior counsel for the appellants, it is important to refer to his second submission also. It was the pointed contention of the learned counsel for the appellants, that appellant nos. 4, 5 and 6, namely, Bhavana Vershney, Renu Gupta and Tulika Jaiswal, are all sisters-in-law of respondent no.2 - Sonia Gupta. In that view of the matter, they are the sisters of the husband of respondent no.2 - Mukul Gupta. We were informed, that appellant nos. 4, 5 and 6 are all married and living independently. They are not residing with any of the appellant nos. 1 to 3. Since they are married, and living independently in different places, they had no concern with the relationship of respondent no.2 - Sonia Gupta with appellant nos. 1 to 3. Further more, our attention was also invited to the fact, that no clear allegations have been levelled by respondent no.2 - Sonia Gupta against any of the appellant nos. 4, 5 and 6. Even during the course of hearing, respondent no.2 - Sonia Gupta, who entered appearance in person, did not contest the aforesaid factual position. Her only submission, during the course of hearing was, that her three sisters-in-law had visited the matrimonial house of respondent no.2, on the occasion of 'Grah Parvesh', and the 'Naming Ceremony' of her daughter. We are of the view, that the visit of the three sisters-in-law of respondent no.2 - Sonia Gupta, on the above two occasions were for celebration, and cannot be treated as occasions where they harassed respondent no.2. In any case, in the absence of any material on the record of this case, relating to harassment on the above two occasions, we are satisfied, that the proceeding initiated against appellant nos. 4, 5 and 6, consequent upon the registration of the first information report by respondent no.2 - Sonia Gupta on 10.04.2002, was not justified. The same deserves to be quashed. The same is accordingly hereby quashed.

24. Since, we have not interfered with the impugned summoning order dated 12.05.2008(as against appellant nos. 1 to 3), we would consider it just and appropriate to request the trial Court, to take up and dispose of the proceedings emerging out of Crime Case No. 326 of 2002, registered at Police Station Shiv Kutti, Allahabad, under Sections 498A and 506 of the Indian Penal Code, read with Sections 3/4 of the Dowry Prohibition

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Act, against appellant nos. 1 to 3 only, as expeditiously as possible.

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25. The instant appeal is disposed of in the above terms.

Kalpana K. Tripathy

Appeal Disposed of.