IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 901 of 2022
Reserved on: 05.10.2026
Date of Decision: 14.10.2026
Uploaded on: 14.10.2026

Tota Ram

....Petitioner/accused

Versus

Kanchan Lata & Anr.

....Respondent/complainants

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting.[1] Yes.

For the petitioner/ accused	:	**Mr. Peeyush Verma, Senior Advocate, with Mr. Ajay Kumar, Advocate.**
For the respondents	:	**M/s. Abhishek Dulta & Vishal Verma, Advocates, for respondent/complainant No.1.**
		Mr. Raj Pal Thakur, Additional Advocate General, for respondent/complainant No.2-State.

Chirag Bhanu Singh,Judge

The petitioner/accused, has invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking to set aside and quash Case No. 1 of 2017, along with the summoning order dated 01.06.2018 and the notice of accusation dated 03.09.2022, passed by the learned Judicial Magistrate First Class, Court No.VII, Shimla, H.P.

1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. The genesis giving rise to the present petition may be succinctly put thus, the respondent/complainant No.1, Kanchan Lata who is the wife of the present petitioner/accused filed a complaint under Section 190 of the Code of Criminal Procedure for offences punishable under Sections 406 and 506 of the Indian Penal Code (IPC), alleging that the present petitioner/accused had misappropriated and retained the *'Istridhan'* belonging to the respondent/ complainant.

3. It was averred in the complaint that the respondent/complainant was married to the petitioner/accused in the year 2007 as per Hindu rites and ceremonies and had been residing with the petitioner/accused in the matrimonial home situated at Village Banthal, Karsog.

4. Right from the inception of the marriage, the petitioner/accused was stated to be complaining about insufficient dowry, constraining the respondent/complainant to report the matter to the police. The petitioner/accused used to remain away from the house and the respondent/complainant was constrained to live with her parents.

5. Since the petitioner/accused was not even willing to pay maintenance to the respondent/complainant, she was constrained to take shelter at her parental home. She instituted a case for maintenance. About nine years ago, the petitioner/accused/accused obtained an *ex-parte* decree of divorce and had thereafter remarried.

6. It was further averred by the respondent/complainant that her *"Istridhan"* was still in possession of the petitioner/accused and that he had been threatening her. The respondent/complainant made several requests since 2011 and a legal notice was also served, but to no avail.

7. Based on the aforesaid complaint, the learned Judicial Magistrate First Class, Court No.VII, Shimla, H.P., summoned the petitioner/accused on 01.06.2018. Eventually, vide order dated 03.09.2022, finding sufficient material on record regarding the commission of offences punishable under Sections 406 and 506 IPC, notice of accusation was put to the petitioner/accused, hence, the present proceedings.

8. Learned counsel for the petitioner/accused challenged the aforesaid orders on the ground that the complaint

was an outcome of *mala fides* and frivolous in nature and the allegations *per se* did not constitute the basic ingredients of Sections 406 and 506 IPC. It was contended that the respondent/complainant intentionally concealed material facts, failing to mention that a decree of divorce had already been granted in favour of the petitioner/accused on the grounds of cruelty and desertion vide judgment and decree dated 09.10.2012. It was submitted that after initially putting in appearance, the respondent/complainant had intentionally chosen to be proceeded against *ex-parte*. It was also submitted that she had taken away all her belongings from the matrimonial home within days of the marriage. Furthermore, she had been held not entitled to maintenance with effect from 21.09.2016 by the Hon'ble High Court.

9. It was further urged that the respondent/complainant had filed a civil suit titled ***Kanchan Lata v. Tota Ram*** in the year 2011 seeking permanent maintenance from the petitioner/accused, which stood dismissed by the learned District Judge, Family Court, vide order dated 13.05.2022. Thus, looking at the entire circumstances, the summoning order as well as the notice of accusation are bad in law.

10. The learned counsel for the petitioner/accused further urged that the parties have been residing separately for more than nine years. While the respondent/complainant claimed to have been requesting the return of her belongings *"Istridhan"* since 2011, the complaint was preferred only on 19.07.2017. Thus, the complaint was barred by limitation under Section 468 Cr.P.C., as the offences under Sections 406 and 506 IPC prescribe punishment not exceeding three years, for which the period of limitation for taking cognizance is three years. It was accordingly prayed that the present petition be allowed and the impugned summoning order, notice of accusation and consequential proceedings be quashed and set aside. In support of his contentions, learned counsel for the petitioner/accused placed reliance upon ***State of Himachal Pradesh v. Tara Dutt & Anr. (AIR 2000 SC 297).***

11. *Per contra*, learned counsel for the respondent/complainat strenuously urged that an offence relating to the claim of *"Istridhan"* is a continuing offence. So long as the *"Istridhan"* remains in the custody of the husband, the wife, being the aggrieved person, can maintain a claim for the same and the question of limitation would not arise. On merits as

well, the ingredients of Sections 406 and 506 IPC are squarely made out.

12. To buttress his contentions, learned counsel for the respondent/complainant placed reliance upon the judgment of Hon'ble Surpreme Court in ***Krishna Bhattacharjee v. Sarathi Choudhury and Another [SLP (Crl.) No. 10223 of 2014, decided on 20.11.2015], (2016) 2 SCC 705*** and ***Kamatchi v. Lakshmi Narayanan [Criminal Appeal No. 627 of 2022, decided on 13.04.2022].***

13. Learned counsel for the respondent/complainant further relied upon the judgment of the Hon'ble Supreme Court in ***Pratibha Rani v. Suraj Kumar & Anr. [(1985) 2 SCC 370]***, to contend that where allegations relate to Sections 405 and 406 IPC, the High Court, while exercising powers under Section 482 Cr.P.C., should proceed entirely on the basis of allegations made in the complaint or accompanying documents *per se*, and has no jurisdiction to examine the correctness or otherwise of the allegations at this stage.

14. Having considered the rival contentions raised by learned counsel for the parties, the factual matrix of the case which comes to the fore is that the complaint under Sections 406

and 506 IPC for misappropriation and retention of the *"Istridhan"* came to be filed on 19.07.2017.

15. The bare perusal of the complaint shows that the parties were married on 07.02.2007. As per the respondent/complainant herself, the parties were living separately for the last more than nine years, that is, the parties were living separately almost since the year 2008. As per the complainant, thereafter, the petitioner/accused had got married for the second time. She had been making repeated requests to the petitioner/accused for the last more than five years, since the year 2011, to return the *"Istridhan"* and hence the complaint.

16. Admittedly the respondent/complainant has not mentioned anything relating to the dissolution of the marriage by way of a decree of divorce, whether *ex-parte* or otherwise. However, as per the petitioner/accused, the marriage between the parties had been dissolved vide a judgment and decree dated 09.10.2012. The perusal of the aforesaid judgment, which has been placed on record, shows that the marriage between the parties had been dissolved on the grounds of cruelty and desertion as far back as 09.10.2012.

17. It is thus evident that, rightly or wrongly, the status of the parties was severed with effect from 09.10.2012 and they ceased to be husband and wife since then. It would be important to note these facts, as there is a distinction between a decree for divorce and a decree of judicial separation. In the former, there is a severance of status and the parties do not remain husband and wife; whereas in the latter, the relation between the husband and wife continues and the legal relationship continues as it has not been snapped. It gains significance in this particular case, more particularly to appreciate as to whether the offence alleged to have been committed by the petitioner/accused was a "continuing offence" or not.

18. In the complaint, it is the averred case of the respondent/complainant that she had been repeatedly requesting the petitioner/accused to return the *"Istridhan"* since the year 2011. In the year 2011, the respondent/complainant had been appearing in the petition instituted under Section 13 of the Hindu Marriage Act, seeking dissolution. On 05.12.2011, an application under Section 24 seeking *ad-interim* maintenance had been allowed, in addition to the maintenance awarded under

Section 125 Cr.P.C., as is itself evident from the order dated 09.10.2012 on record.

19. The proceedings under Section 125 Cr. P.C filed by the respondent/complainant were carried till the Hon'ble High Court, which came to be disposed of on 21.09.2016. A civil suit seeking maintenance under Section 28 of the Hindu Adoptions and Maintenance Act had also been filed by the respondent/complainant on 20.08.2011 and the same had also been dismissed by the learned District Judge (Family Court), Shimla, on 13.05.2022. Even in those proceedings, apart from seeking maintenance, no *"Istridhan"* had been claimed by the respondent/complainant. Even in the petition under Section 13 filed by the petitioner/accused, no claim for *"Istridhan"* had been made, nor was it apparently made when an application under Section 24 seeking *ad-interim* maintenance was preferred.

20. Adverting to the legal position holding the field, suffice it to say that by now it is fairly well settled that where the punishment for the offences is between one year and three years, the limitation for taking cognizance has been provided under Section 468 Cr.P.C. In that sense of the matter, for an offence

punishable under Sections 406 and 506 IPC, the limitation would indeed be three years. It is well settled by a catena of decisions that if an accused is charged with two or more offences, the limitation is to be reckoned on the basis of the major offence.

21. Since the present complaint had been preferred under Sections 406 and 506 of the IPC, the limitation for filing the complaint had to be three years. As per the complainant herself, they had been residing separately almost since the year 2008, and she had been making requests for the return of her belongings and valuable articles, as per the list filed in the civil suit for seeking maintenance in the year 2011. Neither the list has been annexed along with the complaint, nor is there any reference to any list in the suit itself, which also already stands dismissed. Admittedly, the marriage between the two had been dissolved on 09.10.2012 itself. There is no reference to the dissolution of marriage in the complaint too.

22. The complaint admittedly came to be filed on 19th July, 2017. Keeping in view the demand for *"Istridhan"* which was made in 2011 and even keeping in view the decree of divorce dated 09.10.2012, the claim preferred by the

respondent/complainant undoubtedly was much after three years.

23. Though the learned counsel for the respondent/complainant has placed strong reliance upon the judgment of the Hon'ble Supreme Court titled ***Krishna Bhattacharjee v. Sarathi Choudhury and Another*, [(2016) 2 SCC 705],** to contend that since an offence relating to retention of "*Istridhan"* by the husband or any other family member is a "continuing offence", the question of limitation may not arise and the complaint may not be barred by limitation.

24. There can be no dispute that a wife cannot only file a suit for recovery of the *"Istridhan"*, but she may also not be barred from lodging a criminal complaint for criminal breach of trust. It would also be a "continuing offence", as has been held by the Hon'ble Supreme Court in the aforesaid judgment. But a clear distinction has been carved out by the Hon'ble Supreme Court itself, holding that in case the status of the parties is not severed because of a decree of dissolution of marriage, the offence may be a "continuing offence", but if the status between

the parties has been severed, it may not be a "continuing offence".

25. In ***Krishna Bhattacharjee's Case*** **(supra)**, it was held that if there is only a decree of judicial separation, the relationship between husband and wife continues and the legal relationship continues as if it has not been snapped. Thus understood, the demand for *"Istridhan"* will remain a continuing offence. After the dissolution of marriage, it may not remain the same. The distinction may be subtle, but it is indeed marked, and so has it been held in the aforesaid judgment. After the relations between the husband and the wife severed, the offences relating the Section 498-A and demand of *"Istridhan"* may no more ramin as "continuing offence".

26. In the case at hand, admittedly there has been a severance of the relationship between the parties as husband and wife with effect from 09.10.2012. Even in case the respondent/complainant had forgotten to lay a claim to the *"Istridhan"*, either while filing a petition under Section 13 HMA or filling a suit for maintenance under Section 528 of the Hindu Adoptions and Maintenance Act, she could have done so within

the prescribed period of limitation, that is, three years therefrom. Had the marriage not been dissolved and their relationship had continued even subject to their being separated the offence of retention of *"Istridhan"* could have been said to be a continuing offence.

27. Viewed in the totality of circumstances discussed above, it can safely be held that in the factual circumstances of the present case, it cannot be said that the offence was a continuing offence. The respondent/complainant could have laid a claim to the *"Istridhan"* at best within three years of the decree of divorce, that is, three years from 09.10.2012. The complaint having been made much thereafter, the same was thus barred by limitation as prescribed by Section 468 of the Code of Criminal Procedure.

28. For all the reasons discussed hereinabove, the present petition is allowed. As a sequel, the proceedings pending before the Court of learned JMFC, Court No.VII, Shimla, including the summoning order dated 01.06.2018 and the notice of accusation dated 03.09.2022 and all subsequent proceedings thereto, are quashed and set aside.

29. The petition is disposed of in the aforesaid terms, so also the pending mislaneous application(s), if any.

(Chirag Bhanu Singh)
Judge

14th October, 2026
(Shamsh Tabrez)