IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.56754 OF 2018 (GM-RES)

BETWEEN:

SRI. MANJUNATH HEBBAR
S/O VASUDEV HEBBAR
AGED ABOUT 32 YEARS,
ARCHAK
SRI MAHAGANAPATHI TEMPLE
TEMPLE STREET, GIRINAGAR
BENGALURU – 085.

... PETITIONER

(BY SRI C.V.NAGESH, SENIOR ADVOCATE A/W
SRI S.RAJASHEKAR, ADVOCATE (VIDEO
CONFERENCING))

AND:

1. THE STATE OF KARNATAKA
GIRINAGARA POLICE STATION AND
CID SPECIAL INVESTIGATING AGENCY
BENGALURU THROUGH
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU – 560 001.

2. SMT. PALLAVI MATHIGHATTA
WIFE OF SRI MANJUNATHA HEBBAR
AGED ABOUT 28 YEARS,
NO.3, 17TH MAIN, 9TH CROSS,

MUNESHWARA BLOCK
BENGALURU – 560 026.

... RESPONDENTS

(BY SMT.NAMITHA MAHESH B.G., HCGP FOR R1
(PHYSICAL HEARING);
SRI ARAVIND M.NEGLUR, ADVOCATE FOR R2
(VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.26533/2018 PENDING BEFORE THE I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU, INCLUDING THE COMPLAINT DATED 29.08.2015, FIR IN CRIME NO.257/2015 DATED 29.08.2015 AND THE CHARGE SHEET NO.06/2018 DATED 07.09.2018 REGISTERED AGAINST THE PETITIONER (ACCUSED NO.1) BY THE R-1 POLICE FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 323, 376, 376(2) (f) (i) (n), 498A, 109 OF THE INDIAN PENAL CODE AND ALL FURTHER PROCEEDINGS PURSUANT THERETO VIDE ANNEXURE-C, B, A AND D RESPECTIVELY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.09.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.26533 of 2018 pending before the I Additional Chief Metropolitan Magistrate, Bangalore, as also, the FIR in Crime No.257 of 2015 and charge sheet registered against the

petitioner in Charge Sheet No.6 of 2018 dated 07.09.2018 for offences punishable under Sections 323, 376, 376(2)(f)(i)(n), 498A and 109 of the IPC.

2. *Shorn* of unnecessary details; the facts adumbrated in brief are as follows:-

The petitioner and the 2nd respondent/complainant got married at Sirsi, Uttara Kannada District on 27.05.2009. The claim of the petitioner is that from the date of marriage, the petitioner and the 2nd respondent lived happily till the fateful day i.e., 18.03.2012 when the 2nd respondent left the marital house and started to live away from the petitioner. After the 2nd respondent left the marital house, the complainant caused a legal notice to the petitioner on 04.08.2014 claiming that the petitioner has deserted her and sought maintenance from the hands of the petitioner. The petitioner sent a reply to the legal notice and notwithstanding the same, the

complainant filed petition under Section 125 of the Cr.P.C. seeking maintenance from the hands of the petitioner. The petitioner files his objections to the petition filed under Section 125 of Cr.P.C. by the complainant, after which the petitioner files a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights, countering which, the complainant files a petition in M.C.No.25 of 2016 seeking annulment of marriage with the petitioner. On issuance of notice in the petition filed by the complainant seeking divorce in M.C.No.25 of 2016, the petitioner files a civil petition in C.P.No.141 of 2018 seeking transfer of petition filed by the petitioner and during the pendency of consideration of the said petition, the complainant registers a complaint, which becomes an FIR in Crime No.257 of 2015, on 29.08.2015.

3. The complaint is registered against several persons including the pontiff of Ramachandrapura Mutt. The complaint insofar as it pertains to the petitioner and the aftermath of the said complaint, concerns the present petition. The present petition does not or is not in consideration of any of the allegations or proceedings against all the other accused in the FIR in Crime No.257 of 2015.

4. After registration of the crime, the police investigated into the matter and have also filed a final report/charge sheet in C.C.No.26533 of 2018 in Charge Sheet No.6 of 2018. The charge sheet was filed on 07.09.2018 against the petitioner for offences punishable under Sections 323, 376, 376(2)(f)(i)(n), 498A and 109 of the IPC. The learned Magistrate takes cognizance of the matter and issues process on 27.09.2018. Immediately thereafter, the petitioner knocks the doors of this Court by filing the subject writ

petition on 18.12.2018. This Court entertaining the petition has granted an interim order of stay of further proceedings in the aforesaid criminal case and the said interim order continues to be in operation as on date.

5. Heard the learned Senior Counsel Sri C.V.Nagesh appearing for Sri S.Rajashekar, learned counsel for the petitioner, Smt. Namitha Mahesh B.G., learned High Court Government Pleader appearing for respondent No.1/State and Sri Aravind M.Neglur, learned counsel appearing for respondent No.2/ complainant.

6. The learned Senior Counsel appearing for the petitioner would vehemently argue and contend that the entire proceedings right from the word go is a rude shock, to known canons of law as every stage of the proceedings are vitiated on account of it being blatantly contrary to law. He would urge the following contentions:

(i) The delay in lodging the complaint and registration of FIR have vitiated the entire proceedings, as there is admittedly, a delay of 9 months in registration of complaint against the petitioner;

(ii) The cognizance of the offence taken by the learned Magistrate of the offences alleged is without application of mind as law requires determination of existence of sufficient ground prior to issuance of process;

(iii) The learned Magistrate takes cognizance under Section 190 of the Cr.P.C., for offences punishable under Sections 323, 376, 498A and 109 of the IPC without there being any allegation of the said nature against the petitioner;

(iv) The learned Magistrate grossly erred in taking cognizance of the offence on the basis of a final report submitted by the CID who admittedly is not an officer in–charge of the police station;

(v) The taking of cognizance on the report filed by the CID and issuance of process thereon against the petitioner is violative of Section 204 of the Cr.P.C.;

On the aforesaid grounds, the learned Senior Counsel would submit that the entire proceedings right from the word go stand vitiated. To strengthen the aforesaid contentions, he would place reliance upon the following judgments:

(1) *MALLIKARJUNA AND OTHERS v. THE STATE OF KARNATAKA (ILR 2018 KAR 354).*
(2) *GHCL EMPLOYEES STOCK OPTION TRUST v. INDIA INFOLINE LIMITED AND OTHERS ((2013) 4 SCC 505)*
(3) *SUNIL BHARTI MITTAL v. CENTRAL BUREAU OF INVESTIGATION ((2015)4 SCC 609)*
(4) *MUKESH SINGH v. STATE (NARCOTIC BRANCH OF DELHI) ((2020) 10 SCC 120)*
(5) *STATE OF BIHAR AND ANOTHER v. LALU SINGH ((2014) 1 SCC 663)*
(6) *KISHAN SINGH v. GURPAL SINGH AND OTHERS ((2010) 8 SCC 775)*
(7) *RAKESH SHETTY v. STATE OF KARNATAKA AND OTHERS (Writ Petition No.11169 of 2020)*
(8) *MANOJ KUMAR SHARMA AND OTHERS v. STATE OF CHHATTISGARH AND ANOTHER (Criminal Appeal No.775 of 2013)*
(9) *RUKMINI NARVEKAR v. VIJAYA SATARDEKAR AND OTHERS ((2008) 14 SCC 1)*
(10) *M.SARAVANA PORSELVI v. A.R. CHANDRASEKAR AND OTHERS (2008 AIR SCW 3777)*
(11) *SIDDHARAM SATLINGAPPA MHETRE v. STATE OF MAHARASHTRA AND OTHERS (AIR 2011 SC 312)*
(12) *TOFAN SINGH v. STATE OF TAMIL NADU ((2021) 4 SCC 1)*
(13) *PRAKASH CHAND v. STATE OF HIMACHAL PRADESH ((2019) 5 SCC 628))*

(14) *SAVITRI PANDEY & ANOTHER v. STATE OF U.P. AND OTHERS (2015 AIR SCW 3485)*
(15) *RAMDAS & OTHERS v. STATE OF MAHARASHTRA(AIR 2007 SC 155)*
(16) *RAJENDRA RAJORIYA v. JAGAT NARAIN THAPAK & ANOTHER (AIR 2018 SC 299)*
(17) *T DIWAKARA AND OTHERS v. STATE OF KARNATAKA (ILR 2006 KAR 4632)*

7. On the other hand, Sri Aravind.M.Neglur, learned counsel appearing for respondent No.2, in reply, would submit that there cannot be any delay as contended by the petitioner, as the offence coming under Section 498A of IPC depicts punishment for 3 years and, therefore, the complaint is lodged within those three years. He would place reliance upon the Standing Order No.424 dated 7.11.1958 depicting the officer of CID to be the officer-in-charge of a Police Station for conduct of investigation and, therefore would contend that once he conducts the investigation, he is empowered to file the charge sheet. He would submit that in terms of Section 36 of the Cr.P.C., a superior officer can also exercise jurisdiction of the officer in

charge of a police station and therefore, filing of final report does not become vitiated as contended; taking of cognizance of offence of rape under Section 376 of IPC, cannot be found fault with as it also concerns accused No.1 as the offence of accused No.1 and accused No.2 being intertwined, cannot be held to be bad in law.

7.1. He would submit that there are manifold disputed questions of fact which would admittedly be a matter of trial before the criminal Court as it is for the petitioner to come out clean in the trial and in terms of the charge sheet that is filed, undoubtedly the petitioner is guilty of the offences. He would place reliance upon the following judgments:

(1) *A.R.ANTULAY v. RAMDAS SRINIWAS NAYAK AND ANOTHER ((1984) 2 SCC 500)*

(2) *STATE OF ANDHRA PRADESH v. P.V.PAVITHRAN ((1990)2 SCC 340)*

(3) *STATE OF GUJARAT v. AFROZ MOHAMMED HASANFATTA ((2019)20 SCC 539))*

8. The learned High Court Government Pleader Smt. Namitha Mahesh B.G., would partially toe the lines of the learned counsel appearing for the complainant and would submit that the officer of CID is empowered to file the final report/charge sheet and would submit that identical view with regard to officer in charge of a police station having been taken by a Co-ordinate Bench of this Court in Criminal Revision Petition No.34 of 2018 disposed of on 18-01-2021 is stayed by the Apex Court in S.L.P.Nos.2157-2158 of 2021 and, therefore, the same should not be addressed by the Court. She would place reliance upon the judgment of the learned single Judge of this Court in the cases of:

(1) *NARASIMHAIAH v. STATE OF KARNATAKA AND ANOTHER (ILR 2002 KAR 3157)*

(2) *IDEYA VENDAN.R AND OTHERS v. THE ADDITIONAL CHIEF SECRETARY AND OTHERS (W.P.Nos.7246-7250 of 2013 & CONNECTED CASES* DISPOSED ON *26.09.2013)*

Relying on the aforesaid judgments, the learned High Court Government Pleader would contend that power is vested with the Government to order investigation by the CID; once so done he would be empowered to file the charge sheet as well and would further contend that it is a matter of trial in which the petitioner has to come out clean. This Court should not interfere at this stage. Both the learned counsel for the respondents, in unison, seek dismissal of the writ petition.

9. I have given my anxious consideration to the submissions made by the learned Senior Counsel appearing for petitioner and respective learned counsel appearing for the parties and in furtherance whereof, the following points would arise for my consideration:

(i) Whether there is delay in filing the complaint/registration of the FIR and the said delay would vitiate the entire proceedings?

(ii) Whether the learned Magistrate taking cognizance of the offence on the basis of a final report filed by the policeman who was

in fact not an officer in-charge of the police station, has vitiated the entire proceedings?

(iii) Whether cognizance taken by the learned Magistrate on the final report and issuance of process suffers from non-application of mind and would be contrary to Section 204 of the Cr.P.C.?

I will now proceed to consider the aforementioned points in their seriatim.

10. **Point No.(i)**:

(i) Whether there is delay in filing the complaint/registration of the FIR and the said delay would vitiate the entire proceedings?

To answer this point, it is germane to notice the complaint registered by the complainant on 29.08.2015 and its contents, the complaint reads as follows:

"ಶ್ರೀಮತಿ ಪಲ್ಲವಿ
ವಯಸ್ಸು: 24 ವರ್ಷ
ಬಿನ್.ಶ್ರೀಧರ ಹೆಗಡೆ
ನಂ.3, 17ನೇ ಮುಖ್ಯ ರಸ್ತೆ, 9ನೇ ಅಡ್ಡರಸ್ತೆ,
ಮುನೇಶ್ವರ ಬ್ಲಾಕ್, ಗಿರಿನಗರ, ಬೆಂಗಳೂರು.

ರವರಿಗೆ,
ಠಾಣಾಧಿಕಾರಿಗಳು,
ಗಿರಿನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ನಾನು ಪ್ರಸ್ತುತ ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತೇನೆ. ನನ್ನ ತಂದೆ– ತಾಯಿಯವರು ಶಿರಸಿಯ ಸಮೀಪದ ಮತ್ತಿಘಟ್ಟ ಎಂಬಲ್ಲಿ ಬಡಕೃಷಿಕರಾಗಿದ್ದಾರೆ.

ನಾನು ನನ್ನ ಹೈಸ್ಕೂಲು ವಿದ್ಯಾಭ್ಯಾಸವನ್ನು ಹೊಸನಗರ ಶ್ರೀರಾಮಚಂದ್ರಾಪುರ ಮಠ ನಡೆಸುವ ಸಾಗರ ತಾಲ್ಲೂಕಿನ ಚದುರವಳ್ಳಿಯ ಶ್ರೀ ಭಾರತೀ ವಿದ್ಯಾನಿಕೇತದಲ್ಲಿ ಆರಂಭಿಸಿದೆ. 8 ಮತ್ತು 9ನೇ ತರಗತಿ ಅಲ್ಲದೆ 10ನೇ ತರಗತಿಯ ಆರಂಭದ ತಿಂಗಳು ನಾನು ಅದೇ ವಸತಿಯುತ ಶಾಲೆಯಲ್ಲಿ ವ್ಯಾಸಂಗ ಮಾಡುತ್ತಿದ್ದೆ.

ಶಾಲೆಯಲ್ಲಿದ್ದ ಸಂದರ್ಭಗಳಲ್ಲಿ ನಾವು ಶಾಲಾ ವಿದ್ಯಾರ್ಥಿಗಳು ಶ್ರೀರಾಮಚಂದ್ರಾಪುರ ಮಠದಲ್ಲಿ ನಡೆಯುವ ವಿಶೇಷ ಕಾರ್ಯಕ್ರಮಗಳಿಗೆ, ಗುರುಗಳ ದರ್ಶನ ಹಾಗೂ ಸೇವೆಗೆ ಹೋಗುತ್ತಿದ್ದೆವು. ಈ ರೀತಿ ನಾವು ಗುರುಗಳ ದರ್ಶನಕ್ಕೆ ಹೋಗುತ್ತಿದ್ದಾಗ ಶ್ರೀ ರಾಘವೇಶ್ವರ ಭಾರತೀ ಸ್ವಾಮಿಗಳು ನನ್ನ ಮೇಲೆ ವಿಶೇಷ ಕಾಳಜಿ ತೋರಿಸಿ ನನ್ನಲ್ಲಿ ಪ್ರೀತಿ ವಿಶ್ವಾಸದಿಂದ ಮಾತನಾಡಿಸುತ್ತಿದ್ದರು. ಹೀಗಿರುತ್ತಾ ನಾನು 9ನೇ ತರಗತಿ ಮುಗಿಸಿ 2006ರಲ್ಲಿ 10ನೇ ತರಗತಿಯ ಪ್ರಾರಂಭದಲ್ಲಿರುವಾಗ ಹೊಸನಗರದ ಶ್ರೀರಾಮಚಂದ್ರಾಪುರ ಮಠದಲ್ಲಿ ಚಾತುರ್ಮಾಸ್ಯ ನಡೆಯುತ್ತಿತ್ತು. ಆ ಸಂದರ್ಭ ನಾನು ಅಲ್ಲಿಗೆ ಗುರುಸೇವೆಗೆ ತೆರಳಿದ್ದಾಗ ಗುರುಗಳು ನನ್ನ ವಿದ್ಯಾಭ್ಯಾಸ ಹೇಗೆ ನಡೆಯುತ್ತಿದೆ ಎಂದು ವಿಚಾರಿಸುತ್ತಿದ್ದರು. ಒಂದು ದಿನ ಸಂಜೆ ನನ್ನನ್ನು ಅವರ ಖಾಸಗಿ ಕೊಠಡಿಗೆ ಕರೆದು ಮೈ ಕೈ ಮುಟ್ಟಿ ಪ್ರೀತಿ ವಿಶ್ವಾಸದಿಂದ ಮಾತನಾಡಿಸಿದರು. "ಈಗ ನಾವು ಚಾತುರ್ಮಾಸ್ಯ ವ್ರತದಲ್ಲಿದ್ದೇವೆ. ನಾವು ಎಲ್ಲವನ್ನೂ ಶ್ರೀರಾಮನ ಪ್ರೇರಣೆಯಿಂದಲೇ ಮಾಡುತ್ತೇವೆ. ಶ್ರೀರಾಮನ ಅವತಾರವೇ ಆಗಿರುತ್ತೇವೆ. ಶ್ರೀರಾಮನ ಪ್ರೇರಣೆಯಂತೆ ನಾವು ನಿನ್ನನ್ನು ಇಲ್ಲಿಗೆ ಕರೆದಿದ್ದೇವೆ. ನಿನ್ನ ಜಾತಕದಲ್ಲಿ ಕೆಲವು ದೋಷಗಳಿವೆ. ಅದನ್ನು ಪರಿಹಾರ ಮಾಡಲು ಶ್ರೀರಾಮ ಪ್ರೇರಣೆಯಂತೆ ಏನು ಮಾಡಬೇಕೋ ನಾವು ಅದನ್ನು ಮಾಡುತ್ತೇವೆ." ಎಂದು ಹೇಳಿ ನನ್ನನ್ನು ಸಮೀಪ ಎಳೆದು ಅಲ್ಲಿ ಅವರು ಕುಳಿತ್ತಿದ್ದ ಪೀಠದ ಮೇಲೆ ನನ್ನನ್ನು ಅವರ ತೊಡೆಯ ಮೇಲೆ ಕೂರಿಸಿಕೊಂಡರು. ಆಗ ನಾನು ಗಾಬರಿಗೊಂಡೆ. ಆದರೆ ಗುರುಗಳು ಶ್ರೀರಾಮ ಪ್ರೇರಣೆಯಿಂದ ಹಾಗೆ ಮಾಡುತ್ತಿದ್ದೇನೆ ಎಂದು ತಿಳಿಸಿದ್ದ ಕಾರಣ ನಾನು ಅವರನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ನಂಬಿದೆ. ಅವರು "ಶ್ರೀರಾಮನ ಅನುಗ್ರಹದಿಂದ ನಿನ್ನ ದೋಷಗಳೆಲ್ಲವೂ ಪರಿಹಾರವಾಗುತ್ತವೆ. ಅದಕ್ಕಾಗಿ ನಾವು ಏನು ಮಾಡಿದರೂ ವಿರೋಧ ವ್ಯಕ್ತ ಪಡಿಸಬೇಡ" ಎಂದು ನನ್ನಲ್ಲಿ ಹೇಳಿದ್ದರು. ಆಗ ನನಗೆ 15 ವರ್ಷ ವಯಸ್ಸಾಗಿತ್ತು. ನನ್ನ ಮುಗ್ಧತೆಯನ್ನು ಬಳಸಿ ನನ್ನ ಬಟ್ಟೆಗಳನ್ನು ಕಳಚಿ ಅವರೂ ವಿವಸ್ತ್ರವಾಗಿ ನನ್ನನ್ನು ಅವರು ಕೂತಿರುವ ಪೀಠದ ಮೇಲೆ ಅವರ ತೊಡೆಯ ಮೇಲೆ ಎಳೆದು ನನ್ನ ಮೇಲೆ

ಎರಗಿ ಕಿರುಚದಂತೆ ಬಾಯಿ ಮೇಲೆ ಕೈಯಿಟ್ಟು ಸಂಭೋಗ ನಡೆಸಿದರು. ಆನಂತರ "ಎಲ್ಲವೂ ಸರಿಹೋಗುತ್ತದೆ. ನೀನಿದನ್ನು ಯಾರಿಗೂ ಹೇಳಬೇಡ. ಯಾರಿಗಾದರೂ ತಿಳಿಸಿದರೆ ನಿನಗೆ ಒಳ್ಳೆಯದಾಗುವುದಿಲ್ಲ. ಶ್ರೀರಾವನ ಶಾಪ ನಿನಗೆ ತಾಗುತ್ತದೆ" ಎಂದು ಹೇಳಿ ನನಗೆ ಬಟ್ಟೆ ತೊಡಲು ಹೇಳಿ ಅವರೇ ಬಾಗಿಲು ತೆರೆದು ಕಳಿಸಿದರು.

ಈ ಘಟನೆಯಿಂದ ನಾನು ಗಾಬರಿಗೊಂಡು ಹೊರಬಂದಾಗ ಮಠದ ಪರಿವಾರದಲ್ಲಿದ್ದ ಒಬ್ಬರು ಎಂಬವರು ನಾನು ಕಣ್ಣೀರಿಡುತ್ತಾ ಹೊರಬರುವುದನ್ನು "ಗುರುಗಳನ್ನು ಕಂಡು ಬರುವಾಗ ಬೇಜಾರಿನಿಂದ ಬರಬಾರದು. ಅವರು ನಮಗೆ ಒಳ್ಳೆಯದನ್ನೇ ಮಾಡುತ್ತಾರೆ. ನಮ್ಮನ್ನೆಲ್ಲ ಕಾಯುವ ಅವರನ್ನು ಕಂಡು ಬರುವಾಗ ಸಂತೋಷದಿಂದ ಬರಬೇಕು" ಎಂದು ಹೇಳಿದರು. ಇದರಿಂದಾಗಿ ನಾನು ನಡೆದ ಘಟನೆಯನ್ನು ಅವರಲ್ಲಿ ತಿಲಿಸಲು ಹಿಂದೇಟು ಹಾಕಿದೆ.

ಈ ಘಟನೆಯಿಂದ ನಾನು ಮಾನಸಿಕವಾಗಿ ನೊಂದು ಯಾರೊಂದಿಗೂ ಬೆರೆಯಲು ಅಸಾಧ್ಯವಾಯಿತು. ನನ್ನ ಬೇಸರ, ಹತಾಷೆಗಳನ್ನು ಆ ದಿನಗಳಲ್ಲಿ ನನ್ನ ಪರಿಚಿತರು ಹಾಗೂ ವಿಶ್ವಾಸದಲ್ಲಿ ಫೋನ್ ಮೂಲಕ ಹಂಚಿಕೊಳ್ಳುತ್ತಿದ್ದೆ. ಆದರೆ ನಡೆದ ಘಟನೆಯ ಪೂರ್ಣ ವಾಸ್ತವ ಬಿಚ್ಚಿಡಲು ಗುರುಗಳ ಭಯದಿಂದ ಧೈರ್ಯ ಬಂದಿರಲಿಲ್ಲ. ಈ ಘಟನೆಯಾಗಿ ಕೆಲವು ದಿನಗಳಲ್ಲಿ ನನ್ನನ್ನು ಮಠದ ಆಡಳಿತದಿಂದ ನಡೆಸಲ್ಪಡುವ ಕಾಸರಗೋಡು ಜಿಲ್ಲೆಯ ಬದಿಯಡ್ಕದ ಮುಜುಂಗಾವಿನಲ್ಲಿರುವ ಶ್ರೀ ಭಾರತೀ ವಿದ್ಯಾಪೀಠದಲ್ಲಿ 10ನೇ ತರಗತಿ ಮುಂದುವರಿಸಲು ಗುರುಗಳೇ ಸ್ವತಃ ತಿಳಿಸಿ ಅದಕ್ಕೆ ಬೇಕಾದ ವ್ಯವಸ್ಥೆ ಮಾಡಿದರು. ನಾನು ಆ ಶಾಲೆಯಲ್ಲಿ 10ನೇ ತರಗತಿ ವ್ಯಾಸಂಗ ಮಾಡುತ್ತಿದ್ದಾಗ ಅಲ್ಲಿನ ಹೆಡ್ ಮಾಸ್ತರ್ ಫೋನಿಗೆ ಆಗಾಗ ಕರೆ ಮಾಡಿ ನನ್ನನ್ನು ಕರೆಯಿಸಿ ಮಾತನಾಡುತ್ತಿದ್ದರು. ನನ್ನೊಂದಿಗೆ ಮಾತನಾಡುವಾಗ "ನಿನಗೆ ಒಳ್ಳೆಯದಾಗುತ್ತದೆ. ಆದರೆ ನಡೆದ ಘಟನೆ ಬಗ್ಗೆ ಯಾರಿಗೂ ತಿಳಿಸಬೇಡ, ತಿಳಿಸಿದರೆ ನಿನಗೆ ಒಳ್ಳೆಯದಾಗುವುದಿಲ್ಲ ಎಂಬುವುದನ್ನು ಪದೇ ಪದೆ ಹೇಳಿ ನೆನಪಿಸುತ್ತಿದ್ದರು.

ತದನಂತರ ಪಿಯುಸಿ ವ್ಯಾಸಂಗವನ್ನು ನಾನು ಗೋಕರ್ಣದ ಭದ್ರಕಾಳಿ ಪದವಿ ಪೂರ್ವ ಕಾಲೇಜಿನಲ್ಲಿ ಮಾಡಿದ ಮೇಳೆ ನನಗೆ ಹದಿನೆಂಟು ವಯಸ್ಸು ತುಂಬಿದಂತೆ ನನ್ನ ತಂದೆಯನ್ನು ಮಠಕ್ಕೆ ಕರೆಯಿಸಿ "ನಿನ್ನ ಮಗಳ ವಿದ್ಯಾಭ್ಯಾಸವನ್ನು ಇದುವರೆಗೆ ಮಠವೇ ನೋಡಿಕೊಂಡಿದೆ. ಇನ್ನು ಮುಂದಿನ ವಿದ್ಯಾಭ್ಯಾಸವನ್ನೂ ನಾವೇ ನೋಡಿಕೊಳ್ಳುತ್ತೇವೆ. ಮಠದಿಂದಲೇ ಅವಳಿಗೆ ಗಂಡನ್ನು ನೋಡಿ ಮದುವೆ ಮಾಡಿಸುತ್ತೇವೆ. ನೀನವಳಿಗೆ ಮದುವೆ ಮಾಡಿಸಬೇಕು. ಖರ್ಚನ್ನೂ ನಾವೇ ನೋಡಿಕೊಳ್ಳುತೇವೆ." ಎಂದು ಹೇಳಿದರು. **ಈ ಬಗ್ಗೆ ನನ್ನ ತಂದೆಯವರು ಏನೂ ಪ್ರತಿಕ್ರಿಯೆ ನೀಡದಿದ್ದಾಗ "ಈ ಮಾತಿಗೆ ತಪ್ಪಿದರೆ ನಿನ್ನ ಕುಟುಂಬಕ್ಕೆ ಗುರುಶಾಪ ಬರುತ್ತದೆ" ಎಂದು ಹೆಸರಿಸಿದರು. ಅದರಂತೆ ನನ್ನ ಮತ್ತು ನನ್ನ ತಂದೆಯವರ ಒಪ್ಪಿಗೆಯನ್ನು ಒತ್ತಾಯ**

ಪೂರ್ವಕವಾಗಿ ಪಡಿದು ಮಥದ ಪರಿವಾರದಲ್ಲೇ ಇದ್ದ ಮೂಲತಃ ಭಟ್ಕಳ ನಿವಾಸಿಯಾದ ಮೂಜುನಾಥ ಹೆಬ್ಬಾರ್ ಎಂಬುವರ ಜತೆ 2009ರ ಮೇ 27ರಂದು ನನ್ನ ಮದುವೆ ಮಾಡಿಸಿದರು.

ಮದುವೆ ಸಂದರ್ಭದಲ್ಲಿ ನನ್ನ ಜೀವನದಲ್ಲಿ ನಡೆದ ಕಹಿ ಘಟನೆ ಬಗ್ಗೆ ಮಂಜುನಾಥ ಹೆಬ್ಬಾರಿಗೂ ತಿಳಿದಿತ್ತು. ಅವರು ಈ ಘಟನೆ ಬಗ್ಗೆ ಆಗಾಗ ನೆನಪಿಸಿ ನನಗೆ ಮದುವೆಯಾಗಿ ಕೆಲವೇ ತಿಂಗಳಲ್ಲಿ ವಿನಾ ಕಾರಣ ಕಿರುಕುಳ ನೀಡಲು ಆರಂಭಿಸಿದರು. 2012ರ ಸಮಯದಲ್ಲಿ ನಾವು ಗಿರಿನಗರದ ಮನೆಯಲ್ಲಿ ವಾಸಿಸುತ್ತಿದ್ದೆವು. ಆ ಸಂದರ್ಭ ನಮ್ಮ ದಾಂಪತ್ಯ ತೀರಾ ಹದಗೆಡಲು ಪ್ರಾರಂಭವಾಯಿತು. ಈ ವಿಚಾರವಾಗಿ ಮಠದಲ್ಲೂ ಸೇರಿದಂತೆ ಕೆಲವು ಕಡೆ ನಮ್ಮನ್ನು ಕೂರಿಸಿ ಹಿರಿಯರು ಮಾತುಕತೆ ನಡೆಸಿದರು.

2012ರ ಆಗಸ್ಟ್‌ನಲ್ಲಿ ಗಿರಿನಗರದಲ್ಲಿ ಚಾತುರ್ಮಾಸ ನಡೆಯುತ್ತಿದ್ದಾಗ ನನ್ನನ್ನು ಗುರುಗಳು ತಂಗಿರುವ ಅವರ ಕೊಠಡಿಗೆ ಕರೆಸಿಕೊಂಡಿದ್ದರು. ಆ ಸಮಯದಲ್ಲಿ ನನಗೆ ಮನದಿಚ್ಛೆ ಕೇಳದೆ ಮಾಡಿಸಿದ ಮದುವೆ ಬಗ್ಗೆ ಗುರುಗಳಲ್ಲಿ ನಾನು ಪ್ರಶ್ನೆಯಿಟ್ಟು ಕಣ್ಣೀರು ಸುರಿಸಿದೆ. ಅದಕ್ಕವರು ನಿನ್ನ ಜಾತಕದಲ್ಲಿ ದೋಷಗಳಿವೆ ಎಂದು ಹೇಳಿ ಕೈ ಹಿಡಿದು ನನ್ನನ್ನು ಅವರ ಸಮೀಪ ಎಳೆದು ನನ್ನನ್ನು ಅಪ್ಪಿಕೊಂಡು ಮುದ್ದಾಡುವ ಪ್ರಯತ್ನ ಮಾಡಿದಾಗ ನಾನು ಗಾಬರಿಗೊಂಡು ಅದಕ್ಕೆ ವಿರೋಧಿಸಿದೆ. ಆಗ ಅವರು ಸಿಟ್ಟುಗೊಂಡು ನನ್ನ ಕಾಲಿಗೆ ಗಟ್ಟಿಯಾಗಿ ಒದ್ದಾಗ ನಾನು ನೆಲದಲ್ಲಿ ಬಿದ್ದೆ. ಆಗ ನನ್ನ ಮೇಲೆ ಅವರು ಎರಗಿ ನಾನು ಉಟ್ಟಿದ್ದ ಬಟ್ಟೆ ಎಳೆದು ನನ್ನನ್ನು ಹೆದರಿಸಿ ಬಲಾತ್ಕಾರವಾಗಿ ಸಂಭೋಗ ನಡಿಸಿದರು.

ಆನಂತರ ನಾನು ಅಳುವುದನ್ನು ಕಂಡು "ಏನೂ ಹೆದರಬೇಡ. ನಿನಗೀಗ ಮದುವೆ ಆಗಿದೆ. ಎಲ್ಲವೂ ಸಹಿ ಹೋಗುತ್ತದೆ. ನಾವು ಕರೆದಾಗಲೆಲ್ಲ ಬರುತ್ತಾ ಇರಬೇಕು" ಎಂದು ಹೇಳಿದರು. ಈ ಘಟನೆಯಿಂದ ಮತ್ತೆ ತೀವ್ರ ಮಾನಸಿಕ ಒತ್ತಡಕ್ಕೊಳಗಾದೆ. ಗುರುಗಳು ಸರಿಯಿಲ್ಲ ಎಂದು ನನ್ನ ಗಂಡನಲ್ಲಿ ನಾನು ಹೇಳಿದರೂ ಅವರು ಅದನ್ನು ಕಿವಿಗೆ ಹಾಕಿಕೊಳ್ಳುತ್ತಿರಲಿಲ್ಲ. ಅಲ್ಲದೆ ಗುರುಗಳು ಕರೆದಾಗ ನೀನು ಅವರಲ್ಲಿಗೆ ಹೋಗಬೇಕು, ಅವರು ಏನು ಮಾಡಿದರೂ ಸಹಕರಿಸಬೇಕು ಎಂದು ನನ್ನ ಗಂಡನೇ ಈ ರೀತಿ ಹೇಳಿದಾಗ ನನಗೆ ಆಘಾತವಾಯಿತು.

ಈ ಘಟನೆಗಳ ನಂತರ ಪ್ರೇಮಲತಾ ಪ್ರಕರಣ ಹೊರಬಂದ ಮೇಲೆ ನನ್ನ ಜೀವನದಲ್ಲಿ ಮತ್ತೆ ಅಲ್ಲೋಲ ಕಲ್ಲೋಲ ಆರಂಭವಾಯಿತು. ಪ್ರಕರಣದ ಬಗ್ಗೆ ಸಿಐಡಿಗಳು ಹಲವರನ್ನು ವಿಚಾರಣೆ ನಡೆಸುತ್ತಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಸೆಪ್ಟೆಂಬರ್ 13ನೇ ತಾರೀಕಿನಂದು ನಾನು ತಂದೆಯ ಮನೆಯಲ್ಲಿದ್ದಾಗ ಅಲ್ಲಿಗೆ ಬಂದ ಅರುಣಶ್ಯಾಮ, ಅನಂತಣ್ಣ, ರಮೇಶಣ್ಣ, ಸುಧಾಕರ, ಮಧುಕರ ಅವರು "ಗುರುಗಳು ನಿನ್ನನ್ನು ಮಠಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬರಲು ನಮ್ಮನ್ನು ಕಳಿಸಿದ್ದಾರೆ. ಕೂಡಲೇ ಹೊರಡು ಎಂದಾಗ ನಾನು ಗಾಬರಿಗೊಂಡು ಬರುವುದಿಲ್ಲ ಎಂದೆ.

ಆಗ ಇವರೆಲ್ಲ ಸೇರಿ ನನ್ನನ್ನು ಎಳೆದು ನನ್ನನ್ನು ಬಲಾತ್ಕಾರದಿಂದ ಅವರು ಬಂದಿದ್ದ ಟೊಯೋಟಾ ಇನೋವಾ ಕಾರಿಗೆ ಹಾಕಿ ಕುಮಟಾ ಸಮೀಪದ ಕೆಕ್ಕಾರು ಮಠಕ್ಕೆ ಅಪಹರಿಸಿ ಕರೆದೊಯ್ದರು. ಅಲ್ಲಿ ರಾಘವೇಶ್ವರ ಭಾರತಿ ಗುರುಗಳು "ನೀನು ನಮ್ಮ ಪರವಾಗಿ ಸಿಐಡಿ ಪೋಲೀಸರ ಎದುರು ಸಾಕ್ಷಿ ಹೇಳಿದರೆ ಅಥವಾ ಈ ಹಿಂದೆ ನಡೆದ ಘಟನೆ ಬಗ್ಗೆ ಏನಾದರೂ ಹೇಳಿದರೆ ನಿನ್ನನ್ನು, ನಿನ್ನ ತಂದೆತಾಯಿಯವರನ್ನು ಮುಗಿಸಿ ಬಿಡುತ್ತೇವೆ" ಎಂದು ನನಗೆ ಕೊಲ್ಲುವ ಬೆದರಿಕೆ ನೀಡಿದರು. ಅದೇ ರೀತಿ ನನ್ನನ್ನು ಅಲ್ಲಿಗೆ ಬಲವಂತದಿಂದ ಕರೆದೊಯ್ದ ಮೇಲೆ ತಿಳಿಸಿದ ಮಂದಿ "ಗುರುಗಳು ಹೇಳಿದಂತೆ ನೀನು ಮತ್ತು ನಿನ್ನ ತಂದೆಯನ್ನು ಮುಗಿಸಿಬಿಡುತ್ತೇವೆ" ಎಂದು ಹೇಳಿದರು. ಜತೆಗಿದ್ದ ತಂದೆಯವರಿಗೂ ಬೆದರಿಕೆ ಹಾಕಿದರು. ಇದರ ನಂತರ ನಾನು ರಕ್ಷಣೆ ನೀಡಲು ಪೋಲೀಸರಲ್ಲೂ ವಿನಂತಿ ಮಾಡಿದ್ದೆ.

ತದನಂತರ ರಾಘವೇಶ್ವರ ಭಾರತೀ ಪ್ರಕರಣದ ಬಗ್ಗೆ ಸಿಐಡಿ ಕಛೇರಿಗೆ ನಾನು ವಿಚಾರಣೆಗೆ ಹಾಜರಾಗುವ ಕೆಲ ಹೊತ್ತಿಗೆ ಮುನ್ನ ಜಗದೀಶ ಶರ್ಮ ಅವರ ಫೋನಿನಿಂದ (9449595222, 9448356785, 9632598506 – ಈ ಮೂರು ನಂಬರುಗಳಲ್ಲಿ ಒಂದರಿಂದ) ಕರೆ ಮಾಡಿದ ಗುರುಗಳು "ಹಳೆಯದು ಯಾವುದನ್ನೂ ಹೇಳಬೇಡ. ನಿನ್ನ ವಿಚಾರಕ್ಕೂ ಈ ಪ್ರಕರಣಕ್ಕೂ ಸಂಬಂಧ ಇಲ್ಲ. ನಮ್ಮ ವಿರುದ್ಧ ಮಾತನಾಡಿದರೆ ಬದುಕು ಸರ್ವನಾಶವಾಗುತ್ತದೆ, ನಿನಗೆ ಒಳ್ಳೆಯದಾಗುವುದಿಲ್ಲ" ಎಂದು ಮತ್ತೆ ಹೆದರಿಸಿದರು. ಅಲ್ಲನೆ ಸಿಐಡಿ ಎದುರು ವಿಚಾರಣೆ ಎದುರಿಸುತ್ತಿದ್ದಾಗಲೇ ಜಗದೀಶ ಶರ್ಮ ನನಗೆ ವಾಟ್ಸ್ ಆಪ್‌ನಲ್ಲಿ ಮೆಸೇಜ್ ಕಳಿಸಿದರು.

ಈ ಮೆಸೇಜನ್ನು ನಾನು ಸಿಐಡಿ ಅಧಿಕಾರಿಯಾದ ಶ್ರೀಮತಿ ಸಿರಿಗೌರಿ ಹಾಗೂ ಪುರುಷೋತ್ತಮ ಅವರಿಗೆ ತೋರಿಸಿದೆ. ಅವರು ಈ ಮೆಸೇಜುಗಳನ್ನು ಅವರ ಫೋನ್ ನಂಬರಿಗೆ ಫಾರ್ವರ್ಡ್ ಮಾಡಿಕೊಂಡರು. ಸಿಐಡಿ ಅಧಿಕಾರಿಗಳು ನನ್ನನ್ನು ಆ ಪ್ರಕರಣದಲ್ಲಿ ವಿಚಾರಿಸಿದಾಗ ನನ್ನ ಮೇಲೆ ಗುರುಗಳು ಮಾಡಿರುವ ಅತ್ಯಾಚಾರದ ಬಗ್ಗೆ ತಿಳಿಸಲು ಈ ಎಲ್ಲಾ ಬೆದರಿಕೆಗಳ ಕಾರಣ ಧೈರ್ಯ ಬಂದಿರಲಿಲ್ಲ.

ಶ್ರೀ ರಾಘವೇಶ್ವರ ಭಾರತೀ, ಅವರ ಬೆಂಬಲಿಗರು ನನ್ನನ್ನು ಬಲಾತ್ಕಾರವಾಗಿ ಗಿರಿನಗರದಿಂದ ಅಪಹರಿಸಿ ಕೆಕ್ಕಾರು ಮಠದಲ್ಲಿ ದಿಗ್ಬಂಧನ ಮಾಡಿ ಜೀವ ಬೆದರಿಕೆ ಮಾಡಿದ್ದಲ್ಲದೆ ಗುರುಗಳು ನನಗೆ ಎರಡು ಬಾರಿ, ಅಂದರೆ ಒಮ್ಮೆ 15 ವರ್ಷ ವಯಸ್ಸಿನವಳಿದ್ದಾಗ ಮತ್ತು ಮತ್ತೊಮ್ಮೆ ಮದುವೆಯಾದ ನಂತರ ಮೇಲೆ ಹೇಳಿದಂತೆ ಅತ್ಯಾಚಾರ ಮಾಡಿರುತ್ತಾರೆ. ಈ ಬಗ್ಗೆ ಕೂಡಲೇ ತನಿಖೆ ನಡೆಸಿ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಂಡು ನನಗೆ ನ್ಯಾಯ ಒದಗಿಸಬೇಕಾಗಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.'

ಇತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ,
ಸಹಿ/–

ಪಲ್ಲವಿ."
(Emphasis added)

The complaint alleges certain offences against several persons. The period of complaint begins from the year 2006 till the date of filing of the complaint on 29-08-2015. It is in the year 2009 the petitioner comes into the picture, on account of his marriage with the complainant. On 27-05-2009 the petitioner and the complainant got married. The allegations in the complaint against the petitioner are that in the year 2012 when the couple were staying at their Girinagar residence at Bangalore, the relationship between them began to sore and began to become irretrievable and in August 2012 during *Chaturmasa* accused No.1 claims to have called the complainant into his room and the incident at that place was narrated to the petitioner. The petitioner not only turned deaf ear to it, but also made a statement that she is grown up now and she need not be afraid of anything and she was asked to

cooperate for all these things. This is the only allegation against the petitioner. Since the complaint relates to several accused, what is insofar as the petitioner is concerned, is the portion that is highlighted in the extract *(supra)*. Therefore, except the aforesaid allegation, there are no allegations that are made against the petitioner. The highlighted portion in the complaint which is the allegation against the petitioner is what is hit by delay, for the reason that, on 18.03.2014 the complainant leaves the matrimonial house and causes a legal notice on 04.08.2014. The contents of the legal notice are germane to be considered. Paragraphs 3 and 4 of the legal notice reads as follows:

> *"3. My client states that, you have regular defaulter in paying rents to the owner of the house where you were residing till my client living with you. It was very insulted to my client before her neighbours. Sometimes my client was taken money from her father and paid to the owner of the house. My client states that she was running their matrimonial home by taking money from her father. When you demand more money from her, she was not able to fulfill your demand,*

> ***ultimately it turned to quarrelling in between you and my client and she left the matrimonial home on 18-03-2012 and started separately from you.***
>
> *4. My client further states that after leaving separately from you, you have continued habit of harassing over Cell phone. (calling and also messaging).”*
>
> *(Emphasis added)*

Paragraph-4 *(supra)* narrates that the complainant after living separately from him, the petitioner has continued the habit of harassing her over Cell phone, either by calling or messaging. The complainant files a petition under Section 125 of the Cr.P.C. seeking maintenance. Certain averments in the petition that are germane are extracted for the purpose of ready reference:

> ***“4.*** *ಮಾನಸಿಕ ಮತ್ತು ದೈಹಿಕ ಹಿಂಸೆ ಸಹಿಸಲಾಗದ ಅರ್ಜಿದಾರಳು ಬೇಸತ್ತು 18–3–2012 ರಂದು ತನ್ನ ಜೀವನವನ್ನು ತಾನೇ ನಡೆಸಬೇಕೆಂದು ಅನಿವಾರ್ಯವಾಗಿ ಬೆಂಗಳೂರಿನಲ್ಲಿಯೇ ಬೇರೆ ಬಾಡಿಗೆ ರೂಂ ಪಡೆದು ಗಂಡನ ಮನೆಯಿಂದ ಏನೂ ಇಲ್ಲದೇ ಬರಿಗೈಲಿ ಬಂದು ಉಳಿದಳು. ಜೀವನಕ್ಕಾಗಿ ಅಲ್ಲಿ ಇಲ್ಲಿ ಸಣ್ಣಪುಟ್ಟ ಉದ್ಯೋಗ ಮಾಡತೊಡಗಿದಳು. ಈ ಸಂದರ್ಭದಲ್ಲಿ ಎದ್ರುದಾರನು ಫೋನ್ ಮೂಲಕ ಬೆದರಿಕೆ ಕರೆ ಮಾಡುವುದು, ಸಂದೇಶ ಕಳಿಸುವ ಮೂಲಕ ಅರ್ಜಿದಾರಳನ್ನು ಬೆದರಿಸತೊಡಗಿದರು. ವಿಕ್ಷಿಪ್ತ ಸ್ವಭಾವದಿಂದ ನಡೆದುಕೊಂಡ ಎದ್ರುದಾರನು ಅರ್ಜಿದಾರಳು ಬೇರೆ ಉಳಿದು ಬಂದರೂ ಸಹ ನೆಮ್ಮದಿಯ ಜೀವನ ನಡೆಸಲು ಬಿಡಲಿಲ್ಲ. ಪತಿಯಾಗಿ ಪತ್ನಿಗೆ ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ನಡೆದುಕೊಳ್ಳದೇ ಎದ್ರುದಾರನು ಅರ್ಜಿದಾರಳನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ನಿರ್ಲಕ್ಷಿಸಿದ್ದಲ್ಲದೇ ವಿಧ ವಿಧವಾಗಿ ಕಿರುಕುಳ ನೀಡುತ್ತಾ ಬಂದಿರುತ್ತಾನೆ. ಆರ್ಥಿಕವಾಗಿ ಬಲಾಢ್ಯನೂ, ಯಾವ ಕೃತ್ಯಕ್ಕೂ ಹೇಸದವನಾದ ಎದ್ರುದಾರನ*

ಕೃತ್ಯಗಳನ್ನು ಸಹಿಸಲು ಸಾಧ್ಯವಾಗದೇ ಅರ್ಜಿದಾರಳು ಬೆಂಗಳೂರಿನಲ್ಲಿ ಜೀವನ ನಡೆಸುವುದು ಅಸಾಧ್ಯವೆಂದು ಬೆಂಗಳೂರನ್ನು ಬಿಟ್ಟು 2014 ಆಗಷ್ಟ್ ಅಂತ್ಯದಲ್ಲಿ ತನ್ನ ತವರು ಮನೆಗೆ ಬಂದು ಉಳಿದಿರುತ್ತಾಳೆ. ಅರ್ಜಿದಾರಳ ತವರು ಮನೆಯವರು ತೀರಾ ಬಡವರಾಗಿದ್ದು, ಆರ್ಥಿಕವಾಗಿ ಸಾಲದಲ್ಲಿರುವ ಅವರು ಅರ್ಜಿದಾರಳನ್ನು ಸಾಕುವಷ್ಟು ಶಕ್ತಿವಂತರಾಗಿರುವುದಿಲ್ಲ."

(Emphasis added)

The narration in the petition is that the complainant being fed up of the petitioner on 18.03.2012, began to live by herself, staying in Bangalore without anything in her hands. This is filed on 10.12.2014. Even at this point in time, there was no criminal complaint, that was filed against the petitioner. The petitioner files his objections before the Court hearing the petition for maintenance.

11. Long after the aforesaid maintenance case that is filed, the 2nd respondent registers a complaint against the petitioner and several others on 29.08.2015. Therefore, the contention with regard to delay is urged. The legal notice narrates that the complainant separated from the petitioner on 18.03.2012, and also files a case for maintenance under Section 125 of the

Cr.P.C. on 10.12.2014. These are undisputed facts. If the complainant was not even living with the petitioner, the contents of the complaint, the date, and events which the complaint narrates would fall foul of the principle of *'immediacy'* for registration of the complaint unless exceptions exist.

12. The events narrated in the complaint are all of the year 2009 against the petitioner. The last of the event as narrated in the complaint is on 18-03-2012 and the complaint is registered on 29-08-2015. Therefore, on consideration of the complaint and the date of registration of FIR, the unmistakable conclusion that would emerge is that, it is hit by delay, with such delay, it becomes germane to notice the judgments of the Apex Court in the case of ***KISHAN SINGH v. GURPAL SINGH AND OTHERS***[1] wherein the Apex Court holds as follows:

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[1] ***(2010) 8 SCC 775***

"22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. *The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court.* ***The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances*** *of the case. (Vide Chandrapal Singh v. Maharaj Singh [(1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR 1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P[(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446])"*

(Emphasis supplied)

A little earlier to the said judgment, the Apex Court in the case of ***RAMDAS & OTHERS v. STATE OF MAHARASHTRA***[2] has held as follows:

> *"19. We have no doubt that PW 5 is a thoroughly discredited witness and cannot be relied upon. He appears to be a wholly untruthful witness and was introduced by the prosecution only to buttress the case of the prosecution. We, therefore, reject his evidence outright.*
>
> *20. On the question of delay in lodging the first information report, the evidence is equally unconvincing.* ***The occurrence took place in the night intervening 9-1-1996 and 10-1-1996. The first information report, Ext. 22 was recorded on 18-1-1996. There is apparently a delay of about 8 days in lodging the first information report. In the first information report a somewhat different version has been given with a view to explain the delay. It was stated that when on 11-1-1996 the police did not register a case, and the father-in-law of the prosecutrix came to know about the fact, he accompanied the prosecutrix and went to the police station and lodged a report. However, since she was not sent for medical examination and the police did not take any***

[2] ***AIR 2007 SC 155***

action to arrest the accused, she went to her father, who was working in the Jagdamba Sugar Factory on 17-1-1996. On the next day i.e. on 18-1-1996 they came to Beed and lodged the complaint with the Superintendent of Police and thereafter, on the information given by her, a case was registered against the appellants. *This story has been given a go-by by the prosecutrix in the course of her deposition. Her evidence before the court was to the effect that she went to her sister Sindhubai in the morning and reported the matter to her. This happened on 11-1-1996. She along with Sindhubai, PW 3, went to Police Station Kaij but the police did not register a case on the basis of the information given by her. On the next day she went to her father, who was then at the Jagdamba Sugar Factory in Ahmadnagar District. She narrated the entire incident to him on that day. On the next day they went to Beed and complained to the Superintendent of Police, whereafter they were directed to go to the police station and lodge the report which they did on 18-1-1996. If her evidence is carefully analysed the following facts would emerge. The first attempt to lodge the report was made on 11-1-1996. Thereafter the prosecutrix went to her father-in-law on 12-1-1996. On the next day i.e. on 13-1-1996 they went to the Superintendent of Police at Beed and made a complaint. Thereafter they came to Police Station Kaij on the same day and lodged the report. If we accept the statement of*

PW 2, the report should have been lodged on 13-1-1996 or 14-1-1996. There is no explanation as to how it was lodged 4 days later.

21. Another aspect of the matter which deserves notice is the fact that PW 6 Laxman Borade, PSI, Kaij admitted in his deposition that a report had in fact been lodged by the prosecutrix but that related to a non-cognizable offence. No doubt the prosecution has not placed before the court the aforesaid report which perhaps contained the earliest version of the occurrence. Though in her first information report the prosecutrix admitted that on the second attempt when she went with her father-in-law to lodge the report, a report was recorded and she gave her thumb impression on the said report. In the course of her deposition, however, she has omitted these facts. However, we have the evidence of PW 6 to the effect that an earlier report was in fact recorded at the police station on the information given by the prosecutrix but that related to a non-cognizable offence.

22. It would thus appear that there is no reasonable explanation forthcoming from the prosecution explaining the delay in lodging the report with the police, which was in fact lodged 8 days later. Though in her first information report, the prosecutrix mentioned about her earlier report being

> ***recorded, she did not say so in her deposition, but that fact has come in the deposition of PW 6, PSI Laxman Borade."***
>
> *(Emphasis supplied)*

The latest of the judgments of the Apex Court on the aforesaid issue is in the case of ***PARKASH CHAND v. STATE OF HIMACHAL PRADESH***[3] wherein the Apex Court holds as follows:-

> ***"20. There is admittedly a delay of 7 months in lodging the FIR in the case of alleged rape. If the case is reported immediately apart from the inherent strength of the case flowing from genuineness attributable to such promptitude, the perceptible advantage would be the medical examination to which the prosecutrix can be subjected and the result of such examination in a case where there is a resistance. It is the case of the prosecution that she raised hue and cry and therefore apparently she would have resisted. Possibly, a medical examination may have revealed signs of any resistance or injuries.*** *In this case the High Court has proceeded on the basis of testimony of the prosecutrix and sought to fortify it by the extra-judicial confession made before PW 4 and PW 5."*
>
> *(Emphasis supplied)*

[3] ***(2019) 5 SCC 628***

On a perusal of the law declared by the Apex Court in the afore-extracted judgments what would unequivocally emerge is that delay in lodging the FIR would vitiate the proceedings unless delay is satisfactorily explained. The delay that the Apex Court considers in the aforementioned cases were all considering the offence of rape and the delay in those cases ranged from 8 days to 7 months.

13. The delay in the case at hand even on perusal of the complaint is close to 3 years and 6 months as the date of desertion even according to the complaint is on 18.03.2012, and the complaint is registered on 29.08.2015. There is absolutely no explanation for such delay anywhere in the complaint or the statements. The narration in the complaint insofar as it concerns the petitioner ranges from the events that have happened from the years 2009 to 2015. Therefore, the delay in lodging the complaint and registration of FIR,

for the offences alleged has undoubtedly vitiated the very initiation of proceedings against the petitioner. The first point that has arisen for consideration is answered against the prosecution.

14. **Point No.(ii)**:

(ii) Whether the learned Magistrate taking cognizance of the offence on the basis of a final report filed by the policeman who was in fact not an officer in-charge of the police station, has vitiated the entire proceedings?

It is germane to notice certain provisions of the Criminal Procedure Code to consider this point. Notification is defined under Section 2(m); Section 2(o) defines officer in charge of a police station; Police report is defined under Section 2(r); Police Station is defined under Section 2(s). These provisions read as follows:

> *"2. **Definitions**.- In this Code, unless the context otherwise requires , -*
>
> ....
>
> *(m) "notification" means a notification published in the official gazetted.*
>
> ....
>
> ***(o) "officer in charge of a police station" includes, when the officer in charge of the police station is***

> ***absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;***
> … …. …
>
> *(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173;*
>
> *(s) "Police station" means any post or place declared generally or specially by the State Government to be a police station, and includes any local area specified by the State Government in this behalf."*
>
> *(Emphasis supplied)*

Section 36 of the Cr.P.C. which deals with powers of superior officers of police reads as follows:

> *"36. **Powers of superior officers of police**.- Police officers superior in rank to officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."*

The afore-quoted provisions are germane for consideration of this point. Investigation was handed over to an officer of CID. The officer of CID after collection of evidence frames a report and files the same

before the Magistrate. The final report is the charge sheet. The issue whether the officer of CID is an officer in-charge of the police station or not is required to be considered.

15. The basic requirement of declaration of an officer of CID to be an officer in-charge of the police station, is, the office of CID should be declared to be a police station. Admittedly, there is no notification issued under Section 2(m) *(supra)* declaring office of CID to be a police station. Therefore, the officer in-charge in the office of the CID cannot be an officer in-charge of a police station, without at the outset the office of the CID being declared as a police station.

16. It is now necessary to consider the purport of Section 36. Section 36 of the Cr.P.C. depicts powers of superior officers of police. The Police Officers who are superior in rank of the officer-in-charge of a police station may exercise the same power throughout the

local area to which they are appointed as may be exercised by such officer within the limits of the station. What unmistakably emerges is that the police officer superior in rank to an officer in-charge of the police station will have to be a superior officer in-charge of a police station. The officer of the CID cannot mean to be a superior officer in-charge of a police station as the office of CID is not a police station.

17. The learned counsel for the 2nd respondent/complainant would contend that a notification is issued by Government empowering CID to conduct investigation in terms of a general order/standing order which empowers CID to investigate and file a report. Therefore, it becomes germane to notice the said notification issued by Government of Mysore under the Mysore Police Act on 18.02.1970. The said notification reads as follows:

"HOME SECRETARIAT
NOTIFICATION

Bangalore, dated 18th February 1979.

S.O.424,- In exercise of the powers conferred by Sections 4, 5 and 6 of the Mysore Police Act, 1963 (Mysore Act 4 of 1964), the Government of Mysore hereby directs that whenever a Sub-Inspector of Police of the ***State Criminal Investigation Department, investigates at any place in the State an offence, he shall be deemed to be an officer in charge of the Police Station*** *within the limits of which such place is situate.*

[No.HD 83 PEG 69]"

(Emphasis added)

A perusal at the Notification would indicate that investigation department is empowered to investigate at any place in the State an offence and for such investigation he shall be deemed to be an officer in-charge of the police station within the limits of which such place is situated.

18. On the strength of the said notification the contention advanced by the learned counsel for the complainant or the State is unacceptable for the reason that the investigation department which is now the CID, is directed to investigate under the Notification and not

file a charge sheet. Filing of a charge sheet is only by an officer in-charge of a police station. Section 173 (2) of the Cr.P.C. deals with report of a police officer on completion of investigation and reads as follows:

> *"173.* ***Report of police officer on completion of investigation****.-(1) Every investigation under this Chapter shall be completed without unnecessary delay.*
>
> *(1A) The investigation in relation to an offence under sections 376, 376A, 376 AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date* ***on which the information was recorded by the officer in charge of the police station.***
>
> *(2) (i)* ***As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government,*** *stating-*
>
> *(a) the names of the parties;*
> *(b) the nature of the information;*
> *(c) the names of the persons who appear to be acquainted with the circumstances of the case;*
> *(d) whether any offence appears to have been committed and, if so, by whom;*
> *(e) whether the accused has been arrested;*

(f) whether he has been released on his bond and, if so, weather with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860)

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer

shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or

> *reports as they apply in relation to a report forwarded under sub- section (2).”*
>
> *(Emphasis supplied)*

Section 173 of the Cr.P.C. mandates that a final report/charge sheet shall be filed by an officer in-charge of a police station. It is now germane to notice the law, as laid down by the Apex Court, on the subject issue. The Apex Court in the case of ***STATE OF BIHAR AND ANOTHER v. LALU SINGH*** [4] *has* held as under:

> ***“11.*** *The State Government, in exercise of the powers under Sections 7 and 12 of the Police Act, 1861, has framed the Bihar Police Manual. Chapter 15 thereof deals with the constitution and functions of the Criminal Investigation Department. Rule 431, with which we are concerned in the present appeal, reads as follows:*
>
> > *“**431.** **(a)** Sub-Inspectors of the department deputed to districts have not the powers of an officer in charge of a police station nor of the subordinate of such an officer, unless they are posted to a police station for the purpose of exercising such powers. It follows that unless so posted they have not the powers of investigation conferred by Chapter XII CrPC and their functions are confined to supervising or advising the local officers*

[4] ***(2014) 1 SCC 663***

concerned. If for any reason it be deemed advisable that a Sub-Inspector of the department should conduct an investigation in person, the orders of the Inspector General shall be taken to post him to a district where he shall be appointed by the Superintendent to the police station concerned. Such a necessity will not arise in case of Inspectors of CID as given in sub-rule (b) below.

Sub-Inspectors of the department shall not be employed to conduct investigations in person unless such orders have been obtained.

(b) Under Section 36 CrPC Inspectors and superior officers of CID are superior in rank to an officer in charge of a police station and as such may exercise the same powers throughout the State as may be exercised by an officer in charge of a police station within the limits of his station."

Rule 431(b) makes the Inspectors and superior officers of CID superior in rank to an officer in charge of a police station and they have been conferred with the same powers as may be exercised by an officer in charge of a police station. This Rule, therefore, envisages that an Inspector of CID can exercise the power of an officer in charge of a police station.

12. *Here, in the present case, as stated earlier, the investigation was conducted by the Inspector of CID and it is he who had submitted the report in terms of Section 173 of the Code. In view of what we have observed above, the Inspector of CID can exercise the power of an*

> *officer in charge of a police station and once it is held so, its natural corollary is that the Inspector of CID is competent to submit the report as contemplated under Section 173 of the Code. The case in hand is not one of those cases where the officer in charge of the police station had deputed the Inspector of CID to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of CID by the order of the Director General of Police.* ***In such circumstances, in our opinion, it shall not be necessary for the officer in charge of the police station to submit the report under Section 173(2) of the Code. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer in charge of the police station or the officers superior in rank to him, but in a case investigated by the Inspector of CID, all these powers have to be performed by the Inspector himself or the officer superior to him. In view of what we have discussed above, the observations made by the High Court in the impugned judgment [Lalu Singh v. State of Bihar, Cri WJC No. 996 of 2007, order dated 23-3-2009 (Pat)] are erroneous and deserve to be set aside.***
>
> *(Emphasis supplied)*

The Apex Court in the afore-extracted judgment held that it was permissible for a superior officer to conduct investigation and file a final report since the Rules i.e., Rule 43(1)(b) empowered such an act. The corollary of the said finding would be that if the Rules permit such

an investigation and filing of a final report would become sustainable.

Later, the Apex Court in the case of ***TOFAN SINGH v. STATE OF TAMIL NADU***[5], while considering Section 173 has held as follows:

> ***"77.*** *The Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] then set out the provisions of the NDPS Act and concluded: (SCC p. 160, para 10)*
>
> *"10.3.6. Section 52 of the NDPS Act mandates that any officer arresting a person under Sections 41, 42, 43 or 44 to inform the person arrested of the grounds for such arrest. Sub-section (2) of Section 52 further provides that every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. As per sub-section (3) of Section 52, every person arrested and article seized under sub-section (2) of Sections 41, 42, 43, or 44 shall be forwarded without unnecessary delay to the officer in charge of the nearest police station, or the officer empowered under Section 53. That thereafter the investigation is to be conducted by the officer in charge of a police station."*
>
> *(emphasis supplied)*

[5] ***(2021) 4 SCC 1***

78. *The Court in Mukesh Singh [Mukesh Singh v. State (NCT of Delhi), (2020) 10 SCC 120] then went on to state: (SCC p. 161, para 10)*

"10.3.8. … Section 53 does not speak that all those officers to be authorised to exercise the powers of an officer in charge of a police station for the investigation of the offences under the NDPS Act shall be other than those officers authorised under Sections 41, 42, 43, and 44 of the NDPS Act. It appears that the legislature in its wisdom has never thought that the officers authorised to exercise the powers under Sections 41, 42, 43 and 44 cannot be the officer in charge of a police station for the investigation of the offences under the NDPS Act.

10.4. Investigation includes even search and seizure. As the investigation is to be carried out by the officer in charge of a police station and none other and therefore purposely Section 53 authorises the Central Government or the State Government, as the case may be, invest any officer of the Department of Drugs Control, Revenue or Excise or any other department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under the NDPS Act. Section 42 confers power of entry, search, seizure and arrest without warrant or authorisation to any such officer as mentioned in Section 42 including any such officer of the Revenue, Drugs Control, Excise, Police or any other department of a State Government or the Central Government, as the case may be, and as observed hereinabove, Section 53 authorises the Central Government to invest any officer of the Department of Central Excise, Narcotics, Customs, Revenue Intelligence or any other Department of the Central Government….or any class of such officers with the powers of an officer in charge of a police station for the investigation.

Similar powers are with the State Government. The only change in Sections 42 and 53 is that in Section 42 the word "police" is there, however in Section 53 the word "police" is not there. There is an obvious reason as for police such requirement is not warranted as he always can be the officer in charge of a police station as per the definition of an "officer in charge of a police station" as defined under Cr.P.C."

79. *On the basis of this judgment, Shri Lekhi argued that "investigation" under the NDPS Act includes search and seizure which is to be done by a Section 42 officer and would, therefore, begin from that stage.*

80. *In this connection, it is important to advert first to the decision of this Court in H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, (1955) 1 SCR 1150 : AIR 1955 SC 196 : 1955 Cri LJ 526] . This judgment explains in great detail as to what exactly the scope of "investigation" is under the CrPC. It states: (SCR pp. 1156-58: AIR pp. 200-202, para 5)*

"5. .. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises.

Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to

proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender.

Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes 'all the proceedings under the Code for the collection of evidence conducted by a police officer'. For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in Section 162.

Under Section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under Section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be

completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned.

It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefor under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under Section 173 of the Code in the prescribed form furnishing various details.

Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or

seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.

The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551."

This statement of the law was reiterated in State of M.P. v. Mubarak Ali [State of M.P. v. Mubarak Ali, 1959 Supp (2) SCR 201 : AIR 1959 SC 707 : 1959 Cri LJ 920] , SCR at pp. 211 & 212: AIR p. 711."

(Emphasis supplied)

In the aforesaid judgment the Apex Court considered a sub-ordinate officer conducting investigation, but held

that the filing of the final report should be only from the hands of an officer in-charge of the police station.

19. Therefore, the unmistakable conclusion on a coalesce of the aforesaid direction, the notification, the investigation conducted by the officer of the CID and the law laid down by the Apex Court interpreting Section 173 of the Cr.P.C. would be that the chargesheet that is filed by the officer of the CID who is not the officer in-charge of a police station would stand vitiated. Accordingly, this point as well, is answered against the prosecution.

20. The submission of the learned High Court Government Pleader that this Court should hold its hands in considering and answering the subject issue on the score that, a Co-ordinate Bench has taken a similar view and the same is stayed by Hon'ble Apex Court is unacceptable, in the light of enunciation of law by the Apex Court in the afore-extracted judgments.

21. **Point No.(iii)**:-

(iii) *Whether cognizance taken by the learned Magistrate on the final report and issuance of process suffers from non-application of mind and would be contrary to Section 204 of the Cr.P.C.?*

Section 204 of Cr.P.C. mandates that before ordering process against the accused, the Magistrate shall find out existence of sufficient grounds. Section 204 of the Cr.P.C. reads as follows:

> ***"204. Issue of process.*** *-*
>
> *(1) If in the opinion of a Magistrate taking* ***cognizance of an offence there is sufficient ground for proceeding,*** *and the case appears to be-*
>
> *(a) a summons- case, he shall issue his summons for the attendance of the accused, or*
>
> *(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.*
>
> *(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.*
>
> *(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued*

under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

(Emphasis supplied)

The mandate of the afore-extracted provision of law is that the learned Magistrate taking cognizance of an offence can do it only if there exists sufficient ground to proceed. Section 190 of Cr.P.C. which deals with conditions requisite for initiation of proceedings and cognizance of offence by the learned Magistrate would also mean that the learned Magistrate should take cognizance upon a police report on such facts that are narrated in the report. It is the aforesaid provisions that are required to be considered to answer these points. The order taking cognizance becomes germane to be noticed and it reads thus:

> *"For order:*
>
> *Perused the records;*
>
> ***Cognizance is taken in respect of the offence punishable U/s 323, 376, 376(2(F)(I)(N), 498(A), 109 of IPC. Hence register the case against the accused in Register No.III in respect of the above said offence. Issue SS to A1 and 2. Call on 20-10-2018."***
>
> *(Emphasis added)*

The manner in which cognizance is taken against the petitioner is as afore-extracted. If order taking cognizance is considered on the touchstone of either Section 204 or Section 190 of Cr.P.C. *(supra)*, it would without a shadow of doubt fall foul of the said provisions of law, as there is absolutely no application of mind by the learned Magistrate in taking cognizance as to which offence he is taking cognizance of.

22. Cognizance is taken for offences punishable under Sections 323, 376, 376(2)(f)(i)(n), 498(A) and Section 109 of IPC. Neither the complaint, the investigation nor final report speaks of Section 376 of IPC or offence of rape against the petitioner. Therefore, in the light of the facts obtaining in the case at hand as

considered herein and the judgments of the Apex Court extracted hereinabove, the order taking cognizance on the face of it is reckless and suffers from non-application of mind.

23. Reference to the judgments of the Apex Court in the case of ***GHCL EMPLOYEES STOCK OPTION TRUST; SUNIL BHARTI MITTAL*** and the latest judgments on the point in the cases of ***RAVINDRANATHA BAJPE*** and ***SUNIL TODI,*** in the circumstances, is apposite. The Apex Court in the case of ***GHCL EMPLOYEES STOCK OPTION TRUST v. INDIA INFOLINE LIMITED AND OTHERS***[6] holds as follows:

> ***"14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.***

[6] ***(2013) 4 SCC 505)***

... ...

19. *In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. Recently, in Thermax Ltd. v. K.M. Johny [(2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650 : (2011) 11 Scale 128] while dealing with a similar case, this Court held as under: (SCC p. 429, paras 38 & 39)*

> *"38. Though Respondent 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with the appellant Company by initiating the criminal prosecution, it is pointed out that Appellants 2 to 8 are the ex-Chairperson, ex-Directors and senior managerial personnel of Appellant 1 Company, who do not have any personal role in the allegations and claims of Respondent 1. There is also no specific allegation with regard to their role.*
>
> *39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant Company."*
>
> *(Emphasis supplied)*

In ***SUNIL BHARTI MITTAL v. CENTRAL BUREAU OF INVESTIGATION***[7]**,** the Apex Court holds as follows:

> ***"48.*** *Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.*
>
> … … … …
>
> ***53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the***

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[7] ***(2015)4 SCC 609***

reason given turns out to be ex facie incorrect."

(Emphasis supplied)

In the latest judgment, the Apex Court, in the case of ***RAVINDRANATHA BAJPE v. MANGALORE SPECIAL ECONOMIC ZONE LIMITED AND OTHERS***[8] the Apex Court holds as follows:

> *"25. In the case of Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668, in paragraph 13, it is observed and held as under:*
>
> *"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that*

[8] ***(Criminal Appeal Nos. 1047-1048 of 2021 decided on 27-09-2021)***

behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

26. As observed by this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in Pepsi Foods Limited (supra), it is observed and held as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence

> ***before summoning of the accused.*** *The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*
>
> *(Emphasis supplied)*

It would also be useful to notice the latest judgment rendered by the Apex Court on 03.12.2021 in aid of the afore-mentioned reasons assigned. The Apex Court in the case of ***SUNIL TODI AND OTHERS V. STATE OF GUJARAT AND ANOTHER***[9] holds as follows:

> ***"39. This Court has held that the Magistrate is duty bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding.*** *In Mehmood UI Rehman v. Khazir Mohammad Tunda, this Court followed the dictum in Pepsi Foods Ltd. v. Special Judicial Magistrate, and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements*

[9] ***2021 SCC OnLine SC 1174***

recorded or the enquiry conducted constitute a violation of law. The Court observed:

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. ***It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."***

***

"22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. *The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is*

dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under ***Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."***

... ...

42. *In Birla Corporation Ltd. v. Adventz Investments and Holdings[24], the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted:*

"26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC

or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused."

***43.** Hence, the Court held:*

"33. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]..."

44. The above principles have been reiterated in the judgment in Krishna Lal Chawla v. State of U.P."

(Emphasis supplied)

24. A conjoint consideration of the afore-extracted judgments would lead to an unmistakable conclusion that the Magistrate will have to apply his mind while issuing process under Section 204 of the Cr.P.C. as

summoning of the accused cannot be a nonchalant process.

25. A now time, in the journey of the judgment, to consider the authorities relied on by the respondents and its effect on the preceding analysis. The learned counsel appearing for the 2nd respondent places reliance upon the judgment of the Apex Court in the case of ***STATE OF GUJARAT v. AFROZ MOHAMMED HASANFATTA***[10]**,** paragraph 24 of the said judgment reads as follows:

> *"24. In the present case, cognizance of the offence has been taken by taking into consideration the charge-sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality."*

To consider the contention of the learned counsel for the 2nd respondent/complainant that the issue stands

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[10] ***(2019) 20 SCC 539***

covered by ***AFROZ*** insofar as application of mind at the time of taking of cognizance of an offence on filing of a charge sheet is concerned, the facts in the case of ***AFROZ*** are required to be noticed. The facts are found in paragraphs 5 and 6, 13.1, 14, 16, 20 of the said judgment and they read as follows:-

> *"5. Statement of other witnesses viz. Babubhai Kanjibhai Patel, partner of S. Babulal Angadiya and Pravinbhai Jethabhai Patel, Manager of Babulal Angadiya was recorded on 11-8-2014. Charge-sheet was filed under Section 173 CrPC in Criminal Case No. 47715 of 2014 on 18-8-2014 against two persons, namely, Sunil Agarwal and Ratan Agarwal. In the said charge-sheet, the respondent-accused was referred to as a "suspect". The respondent-accused Afroz Hasanfatta was arrested by the police officers of DCB Police Station, Surat on 20-8-2014 for investigation in connection with FIR No. 16 of 2014.* ***The first supplementary charge-sheet was filed under Section 173(8) CrPC in Criminal Case No. 55259 of 2014 against Madanlal Manikchand Jain on 30-9-2014. According to the appellant, in the said first supplementary charge-sheet, the respondent-accused was not added as an accused as the statutory period for filing charge-sheet in the case of the respondent-accused had not expired.***
>
> *6. During the course of further investigation, statement of witnesses CA Surendra Dhareva, Amratbhai Narottamdas Patel*

and elder brother of the respondent-accused Jafar Mohammed Hasanfatta, was recorded under Section 161 CrPC. As per the prosecution, the said statement of Jafar Mohammed Hasanfatta, elder brother of respondent-accused shows that the respondent has arranged to transfer Rs 3,00,00,000 into the account of his brother Jafar Mohammed Hasanfatta through RTGS from Natural Trading Company, owned by co-accused Madanlal Jain. The respondent-accused is the sole proprietor of Nile Industries Pvt. Ltd. Statement of Samir Jiker Gohil, Manager of the said Nile Industries Pvt. Ltd. was recorded on 18-10-2014. According to the prosecution, bank statement of account of the respondent-accused in Union Bank of India, Nanpura Branch from 31-12-2013 to 25-3-2014 reflects crores of money having been transferred from Natural Trading Company's account to respondent's Company—Nile Trading Corporation. Further bank statement of Nile Trading Corpn. also reflects credit of huge amount into its account from Gangeshwar Mercantile Pvt. Ltd. owned by Madanlal Jain. Based on further investigation, namely, statement of witnesses, bank transactions and copy of call details record between respondent and Madanlal Jain and other accused, second supplementary charge-sheet was filed arraigning the respondent as Accused 1 and Amit alias Bilal Haroon Gilani as Accused 2. Based on the second supplementary charge-sheet, cognizance was taken of the offences under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC in Criminal Case No. 62851 of 2014 on 15-11-2014 and the Magistrate ordered issuance of summons against the accused arraigned thereon including the respondent Afroz Hasanfatta.

... ...

13.1. (i) While directing issuance of process to the accused in case of taking cognizance of an offence based upon a police report under Section 190(1)(b) CrPC, whether it is mandatory for the court to record reasons for its satisfaction that there are sufficient grounds for proceeding against the accused?

14. The charge-sheet was filed in Criminal Case No. 47715 of 2014 on 18-8-2014 against the accused persons, namely, Sunil Agrawal and Ratan Agrawal. In the first charge-sheet, the respondent Afroz Mohammad Hasanfatta (Afroz Hasanfatta) was referred to as a suspect. In the second supplementary charge-sheet filed on 15-11-2014 in Criminal Case No. 62851 of 2014, the respondent Afroz is arraigned as Accused 1 and Amit alias Bilal Harcon Gilani as Accused 2. ***In the second supplementary charge-sheet, prosecution relies upon the statement of witnesses as well as on certain bank transactions as to flow of money into the account of the respondent Afroz Hasanfatta and his Company Nile Trading Corporation.*** *The order of taking cognizance of the second supplementary charge-sheet and issuance of summons to the respondent Afroz Hasanfatta reads as under:*

"I take in consideration charge-sheet/complaint for the offence of Sections 420, 465, 467, 468 IPC, etc. Summons to be issued against the accused."

... ...

16. It is well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the

complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] wherein it was held as under: (SCC pp. 428-29, paras 11-13)

> *"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground*

for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not

a prerequisite for deciding the validity of the summons issued."

(emphasis supplied)

... ...

20. In a case instituted on a police report, in warrant cases, under Section 239 CrPC, upon considering the police report and the documents filed along with it under Section 173 CrPC, the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the accused to be groundless and record his reasons for so doing. Then comes Chapter XIX-C — Conclusion of trial — the Magistrate to render final judgment under Section 248 CrPC considering the various provisions and pointing out the three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 CrPC, in Raj Kumar Agarwal v. State of U.P. [Raj Kumar Agarwal v. State of U.P., 1999 SCC OnLine All 1394 : 1999 Cri LJ 4101] , B.K. Rathi, J. the learned Single Judge of the Allahabad High Court held as under: (SCC OnLine All paras 8-9)

"8. ... As such there are three stages of a case. The first is under Section 204 CrPC at the time of issue of process, the second is under Section 239 CrPC before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will

make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 CrPC detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge-sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 CrPC however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, …. At the stage of Section 204 CrPC if the complaint is not found barred under any law, the evidence is not required to be considered nor are the reasons required to be recorded. At the stage of charge under Section 239 or 240 CrPC the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

9. A bare reading of Sections 203 and 204 CrPC shows that Section 203 CrPC requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 CrPC. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality."

(emphasis supplied)

> *We fully endorse the above view taken by the learned Judge.*
>
> *(Emphasis supplied)*

The case that the Apex Court was considering was of the Magistrate taking cognizance on a supplementary charge sheet after direction for a further investigation. It is in those circumstances the Apex Court has held that the Magistrate taking cognizance once a charge sheet was already filed against the accused need not bear application of mind. Therefore, the judgment in the case of ***AFROZ*** would not be applicable to the facts of the case at hand, as the facts considered in the case of ***AFROZ,*** as aforedone, are distinguishable without much *ado*. The added circumstance is the latest judgment of the Apex Court in the cases of ***RAVINDRANATHA BAJPE*** and ***SUNIL TODI*** *(supra)* would hold the field with regard to application of mind. The judgments relied on by the learned counsel appearing for the 2nd respondent in the cases of ***A.R.ANTULAY*** *and* ***P.V.PAVITHRAN*** are rendered on different set of facts

obtaining in those cases considered by the Apex Court and the High Court of Andhra Pradesh. Therefore, none of the judgments relied on by the respondents are applicable to the facts of the case at hand. It is the judgments relied on by the learned Senior Counsel for the petitioner that are overwhelming and sound acceptance on the facts obtaining in the case at hand.

26. Apart from the afore-quoted enunciation of law by the Apex Court, what is to be noticed is the glaring act of the Magistrate of taking cognizance in a casual manner. The cognizance is taken against the petitioner for offences under Sections 323, 376, 498A and 109 of the IPC. It is germane to notice the said provisions of law and they read as follows:

> ***323. Punishment for voluntarily causing hurt.***—*Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

***376. Punishment for rape**.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].*

(2) Whoever,—

(a) being a police officer, commits rape––

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or

authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) [384][* *]*

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

498-A. 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 purposes of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

> *(b) 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.]*

Since cognizance is taken for the afore-said offences, the said offences need consideration. Section 323 deals with punishment for voluntarily causing hurt; Section 376 deals with punishment for rape as obtaining in Section 375; Section 498A deals with cruelty by husband or relatives of husband.

27. A perusal at the complaint, the investigation, the statements recorded under Sections 161 and 164 of the Cr.P.C. nowhere make out any of the ingredients of the aforesaid offences, it is not the allegation against the petitioner that he has voluntarily caused hurt; it cannot be the allegation against the petitioner who is the husband of the complainant of committing rape; the complaint nowhere narrates any cruelty by the

petitioner or his family members as obtaining under Section 498A of IPC. Therefore, the said offence also cannot be pointed against the petitioner. What remains is the offence of abetment under Section 109 of IPC. Section 109 of IPC reads as follows:

> "***109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment***.—*Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.*
>
> *Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.*
>
> *Illustrations*
>
> *(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe A has abetted the offence defined in S. 161.*
>
> *(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.*
>
> *(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may*

> *administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.*

Section 109 of IPC mandates the presence of the abettor in the scene of crime or abetment of a thing as defined under Section 107 of IPC. Section 107 of IPC reads as follows:

> ***107. Abetment of a thing.***—*A person abets the doing of a thing, who—*
>
> *First.—Instigates any person to do that thing; or*
>
> *Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.*
>
> *Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."*

Both Sections 107 and 109 of IPC mandate that an accused should abet another accused in commission of

a crime as is found in the ingredients of Section 107 or 109 as the case would be. There is no allegation against the petitioner both in the complaint or in the charge sheet that the petitioner has abetted accused No.1. All that the complaint narrates against the petitioner is that despite the complainant venting out her grievance, the petitioner did not take any corrective measure. This can by no means be an offence under Section 109 as explained in 107 of the IPC. Therefore, the offence of abetment under Section 109 of IPC also would not hold water.

28. It is in these circumstances that the learned Magistrate was required to apply his mind, record reasons for taking cognizance and issuance of process as it is mandatory that he should find sufficient ground for issuance of process and such application of mind or existence of sufficient ground, would become demonstrable only in the order taking cognizance. The

order taking cognizance *(supra)* does not bear any semblance of application of mind. Issuance of process is a serious matter, since criminal trial is set in motion, on such act of taking cognizance. Such paramount process cannot casually be made by the learned Magistrate. Thus, this point is also answered against the prosecution. Therefore, the submissions advanced in oppugnation, by the respondents are unacceptable, equally so, are the Authorities.

29. For the aforesaid manifold reasons, all the points that have arisen for consideration are held against the prosecution viz., delay in lodging the FIR; final report being filed by an officer who was not in-charge of the Police Station; act of the learned Magistrate in taking cognizance of the offence which bears no application of mind and fact that the complaint itself not linking any event narrated to the offences alleged. In view of the aforesaid findings, I am of the

considered view that such allegations cannot enmesh the petitioner for continuance of trial, as it would without doubt degenerate into harassment and be an abuse of the process of law, resulting in miscarriage of justice. Therefore, this is a fit case where this Court has to exercise its jurisdiction under Section 482 of the Cr.P.C. and obliterate entire proceedings against the petitioner.

30. For the aforesaid reasons, I pass the following:

ORDER

(a) Writ Petition is allowed.

(b) The complaint dated 29.08.2015, FIR in Crime No.257 of 2015 dated 29.08.2015, charge sheet No.06/2018 dated 07-09-2018 and proceedings in C.C.No.26533 pending before the I Additional Chief Metropolitan Magistrate, Bengaluru stand quashed *qua* the petitioner, in respect of the subject matter in this writ petition.

(c) The petitioner shall be entitled to all consequential benefits that would flow from the quashing of the aforesaid orders.

The observations made in the course of the order is restricted to the consideration of the case of the petitioner alone and cannot be paraphrased to any other accused. The trial, if any, pending against any other accused shall be considered by the competent Court without being influenced by the observations or the findings in the case at hand.

Sd/-
JUDGE

bkp