

Reserved on : 06.01.2025
Pronounced on : 22.01.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.3809 OF 2024 (GM – RES)

C/W

WRIT PETITION No.28591 OF 2023 (GM – RES)

IN WRIT PETITION No.3809 OF 2024

BETWEEN:

... PETITIONERS

(BY SMT.JAINA KOTARI, SENIOR ADVOCATE FOR
SRI ARPAN B.PATTANASHETTI, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
BY MANGALORE EAST POLICE STATION,
BEJAI MAIN ROAD, BEJAI,
MANGALURU, KARNATAKA – 575 004.
REPRESENTED BY THE POLICE INSPECTOR.
- 2 . THE INVESTIGATION OFFICER
MANGALORE EAST POLICE STATION,
BEJAI MAIN ROAD, BEJAI,
MANGALORE,
KARNATAKA – 575 004.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1 AND R-2
SRI SANDESH S CHOUTA, SR.ADVOCATE FOR SRI AKASH
B.SHETTI, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FOLLOWING FIR NO. 0176/2023 OF MANGALORE EAST POLICE STATION UNDER SECTIONS IPC 1860 (U/S-420, 406, 403, 109, 384, 34) DTD 25.11.2023 FILED AGAINST P-1 AND P-2 AS MENTIONED IN ANNEXURE-A; ISSUE A WRIT OF MANDAMUS TO THE RESPONDENT AUTHORITIES NOT TO ACT AGAINST ANY FRIVOLOUS COMPLAINT NOR ANY FIR TO BE REGISTERED BY THE POLICE ON THE SAME CAUSE OF ACTION AS IN THE INSTANT W.P.; ISSUE A WRIT OF MANDAMUS DIRECTING THE STATE OF KARNATAKA TO PROVIDE ADEQUATE SAFETY AND SECURITY TO THE PETITIONER NO. 1 HER CHILDREN AND HER FAMILY MEMBERS.

IN WRIT PETITION No.28591 OF 2023

BETWEEN:

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE FOR
SRI AKASH B.SHETTY, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
BY AMRUTHAHALLY POLICE STATION,
REPRESENTED BY THE SPP,
HIGH COURT BUILDING,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SMT.JAINA KOTARI, SENIOR ADVOCATE FOR
SRI ARPAN B. PATTANASHETTI, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CRIME NO. 0295/2023 DATED 08/10/2023 IN AMRUTHAHALLY POLICE STATION, BANGALORE PENDING BEFORE THE 7TH ADDL. CCM COURT, NRUPATUNGA ROAD, BANGALORE CITY FOR THE OFFENCES PUNISHABLE U/S 498A, 506 OF INDIAN PENAL CODE, PENDING BEFORE THE 7TH ADDL. CCM COURT, NRUPATUNGA ROAD, BANGALORE CITY ANNEXURE-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

In the course of this order, for the sake of convenience, the petitioner in Writ Petition No.28591 of 2023 who is the husband of the complainant will be referred to as the petitioner or THE husband and the 1st petitioner in Writ Petition No.3809 of 2024 who is the wife of the petitioner in the companion petition will be referred to as the respondent or the wife. The other parties will be referred as per their rank in the writ petitions. These petitions arise out of complaints and counter complaints between the petitioner/husband and the respondent/wife, details of which are narrated hereinbelow.

2. Facts in Writ Petition No.28591 of 2023: The petitioner/husband and the respondent/wife get married on 10-05-2007. Two children are born from the wedlock, a son and a daughter on 11-12-2011 and 02-05-2013. It is the case of the prosecution that on 28-04-2016 the husband receives a message from one Chaithra Shetty through face-book message which indicated that the respondent/wife and Prasad Shetty, the husband of Chaithra Shetty are in relationship. The petitioner is said to have

questioned the respondent/wife about the allegations made by Chaithra Shetty. The respondent/wife is said to have admitted that Prasad Shetty was her ex-boyfriend and further promised that she will never get in touch with her ex-boyfriend. After the said incident, it is averred, the relationship between the two – petitioner and the respondent – got completely strained. On 10-09-2020 the respondent/wife leaves the matrimonial house in Mangalore and shifts to Bangalore with kids. Since then the kids are with the respondent/wife and have been staying at Bangalore.

3. On 05-10-2020 the petitioner receives a legal notice from the hands of the respondent/wife calling upon him to agree for a mutual consent for termination of marriage and to discuss with regard to the settlement about kids. Another notice is received on 15-03-2022 in which the averment is that in the event the husband would not come forward for settlement, criminal proceedings would be initiated. After this on 11-04-2022, the parties start mediation to sort out differences between them. When the mediation failed or did not reach the terms of settlement as thought by the respondent/wife, on 07-10-2023 she files an application under

Section 10 of the Hindu Marriage Act seeking separation. Immediately thereafter, on the next day, she files a complaint before the jurisdictional Police alleging offences punishable under Sections 498A and 506 of the IPC. This becomes a crime in Crime No.295 of 2023. Again, a third proceeding is initiated by the respondent/wife on 09-10-2023 invoking Section 125 of the Cr.P.C., in Criminal Miscellaneous No.851 of 2023 seeking maintenance from the hands of the petitioner/husband. Fourth proceeding is instituted by the respondent/wife in Criminal Miscellaneous No.153 of 2023 invoking Section 12 of the Domestic Violence Act.

4. The petitioner/husband files a complaint against the wife/respondent, her ex-boyfriend Prasad Shetty and her mother alleging offences punishable under Sections 420, 406, 403, 109, 384 and 34 of the IPC in Crime No. 176 of 2023. Proceedings in Crime No.295 of 2023 are challenged by the petitioner/husband in Writ Petition No.28591 of 2023. The petitioner/husband then files a G & W.C No.30 of 2023 for custody of children which is pending consideration. On 29-11-2023 after all these proceedings, the petitioner/husband files a petition in M.C.No.1688 of 2023 seeking

restitution of conjugal rights. The respondent/wife and other accused challenged the crime so registered in Crime No.176 of 2023 in Writ petition No.3809 of 2024.

5. The crux of the complaint in Writ Petition No.28591 of 2023 is that the petitioner has been cheated by the respondent/wife, extracted money on one pretext or the other and even before the concerned Court seeking maintenance false affidavits are filed and close to ₹1/- crore maintenance is already paid by the husband to the wife. Soon after registration of the complaint, the wife takes it to the mediation and is said to have defamed or threatened the petitioner/husband. Therefore, this forms the crux of the complaint by the husband against the wife. While so doing other members of the family of the wife are drawn into the proceedings.

6. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner in W.P.No.28591 of 2023 and respondent No.3 in W.P.No.3809 of 2024; Sri B.N.Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 in W.P.No.28591 of 2023 and respondents 1 and 2 in

W.P.No.3809 of 2024 and Smt. Jaina Kothari, learned senior counsel appearing petitioners in W.P.No.3909 of 2024 and respondent No.2 in Writ Petition No.28591 of 2023.

7. The learned senior counsel Sri Sandesh J. Chouta appearing for the petitioner/husband would vehemently contend that this is a clear case of abuse of the process of law, as the respondent/wife in her complaint does not utter even a word about cruelty which is necessary under Section 498A of the IPC. All the allegations spring on 15-06-2020, but the complaint is registered on 08-10-2023 without a speck of explanation as to why she kept quiet for three long years. Without there being any ingredients for the offences, if further proceedings are permitted to be continued, the learned senior counsel would submit, that it will become an abuse of the process of law.

8. Per contra, the learned senior counsel Smt. Jaina Kotari appearing for the respondent/wife submits that cruelty under Section 498A of the IPC need not be restricted to physical cruelty or torture only. Mental cruelty is also a facet which would come within the ambit of Section 498A of the IPC. She would submit that since

the matter is still at the stage of investigation, it should not be interfered with. She would seek to place reliance upon certain judgments which would all bear consideration *qua* their relevance in the course of the order.

9. The learned senior counsel Sri Sandesh J. Chouta appearing for the husband/complainant in Writ Petition No.3809 of 2024 would submit that the wife has instituted seven proceedings against the husband; does not cooperate with closure of proceedings, files false affidavit before the concerned Court with regard to her income and on that false pretext the petitioner/husband as on to-day paid close to ₹1/- crore as maintenance to the wife. This is an admitted fact. Therefore, on falsehood the wife is taking maintenance by cheating and extortion. He would submit that the petition filed by the wife be dismissed and the petition filed by the husband be allowed.

10. The learned senior counsel Smt. Jaina Kotari appearing for the respondent/wife would contend that taking maintenance in a legal manner can never be branded as extortion, as those orders on maintenance are not challenged by the petitioner/husband.

Therefore, cheating or extortion cannot be made out. The other offence of criminal intimidation that is alleged is the imagination of the learned counsel for the petitioner/husband. She would seek the petition filed by the wife be allowed and the petition filed by the husband be dismissed.

11. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

12. The afore-mentioned facts are a matter of record. I deem it appropriate to consider Writ Petition No.28591 of 2023 filed by the husband at the outset. It is not in dispute that the petitioner/husband gets married to the complainant/wife on 10-05-2007 and two children are born from the wedlock. All the trouble began when the petitioner/husband is said to have received a message from one Chaithra Shetty wife of Prasad Shetty through face-book alleging that the respondent/wife and Prasad Shetty, husband of Chaithra Shetty are in relationship. Looking at this message, the petitioner is said to have questioned the respondent/wife. The wife then is said to have undertaken that such

things would not be repeated in future. The message on face-book messenger is also appended to the petition. It reads as follows:

"28 APR 2016 AT 21.23
 Sir..... This is chaitra shetty.... I'm prasad shetty wife
 plz. call me.... its very urgent.....my number is 9986411760.

28 APR 2016 AT 21.41

I want to talk abt ur wife n my husband sir....

28 APR 2016 AT 22.52

Sir plzzzz call

I'm trying in all possible ways to reach u.... plzzzz call.

29 APR 2016 AT 00.21

Sir plzz call."

It appears that the allegation that it began to brew stopped thereafter. But, the averment in the petition is that the wife never stopped relationship with Prasad Shetty. Between 28-04-2016 and 10-09-2020 the relationship between the husband and wife further floundered. On floundering of relationship to an irreconcilable position, the wife leaves the matrimonial house in Mangalore and shifts to Bangalore with the children to an apartment that was owned by the petitioner/husband. On 05-10-2020 the petitioner receives a legal notice from the wife calling upon him to agree for a

divorce on mutual consent. When the petitioner/husband does not respond for settlement, the wife causes another notice on 15-03-2022. The said notice is also appended to the petition. The petitioner/husband is said to have given an interim reply to the said notice. After that commences multiple proceedings of settlement between the parties – husband and the wife. The WhatsApp chats appended to the petition is said to be the testimony of those proceedings to arrive at a settlement agreement between the two. The draft of the settlement agreement is also appended to the petition. During the pendency of mediation/settlement proceedings, the wife files an application under Section 10 of the Hindu Marriage Act seeking judicial separation before the concerned Family Court. The said proceeding is said to be pending before the concerned Court. On 08-10-2023 comes the impugned complaint. It becomes necessary to notice the complaint in its entirety. The complaint dated 08-10-2023 reads as follows:

"To

The S.H.O.
Amrathalli Police Station
Bangaluru, Karnataka

From

Mrs. Shreya Sudhir Pai
(Before marriage known as Chandrika Kamat)
wife of Mr. Sudhir M Pai,
D/o Laxman R. Kamat
Resident of A204, RMZ Latitude
Presently Resident: Bellary Road, Amrutahalli
Hebbal, Bangalore -560092

Subject: Harassment by Husband and relatives

Sir.

1. Shreya Pai, the above-mentioned applicant, most respectfully submit that I got married to Mr. Sudhir M Pai, on 10.05.2007 at Bangaluru in which my parents have spent huge amount of money and fulfilled all the demands of the family of my husband, which came at the very last moment. After the marriage we were blessed with two children a son aged about 11 years and a daughter aged about 9 years. My husband was always very abusive and humiliating and he used to humiliate me in public and private moments. He forced us to sleep on floor for several years saying his sleep would disturb by my small children. **On 15th June 2020 my phone stopped working and my husband asked me to use his old i-phone till he gets my phone repaired. When I tried to use that phone, I came across with several messages, whatsapp chats, messenger chats and images and photographs which was highly intimidating and humiliating and a shock for me. My husband who had been treating me with cruelty and was not giving any time, attention and respect and was always humiliating and disrespecting me,** was actually living dual life with three of his friends namely Mr. Narayan Nayak (alias Babu), Mr. Ananth Kamath and Late Veerandra Ballal. All these men were involved in soliciting prostitutes, pervert discussion and representation of women, minor girls and their own daughters and sisters and systematically planning how to abuse them sexually. I was very shocked to see that my husband had shared several of my and my children's photographs including some objectionable and intimate chats with his friends. With one of his friends, he systematically was guiding her how to sexually exploit me by making me drunk and taking advantage of me. Not only that

they had pervert talks about their own sisters, mothers and countless women. My husband along with these three culprits was involved in fulfilling his untamed and pervert sexual desires with prostitutes, escorts and other antisocial activities. Not only the same, my husband was arranging prostitutes/escorts for his friends and negotiating on the amount and rate per person for sexual services. My husband had discussed about me in most degrading manner as if I was an object of his pleasure. I was being forced and pressurised by my husband to get indulge in group sex and other activities with his friends which I refused. All these had put me in a mental trauma and shock. When I confronted him and his family, his family told him to shift me to Bangalore and requested me that I shall not take any action for the sake of reputation and image of both the families. I was totally devastated. I am financially depended on my husband as after marriage I was not allowed to work and had to take care of family responsibilities. My husband even after several reminders did not gave my investments and other important documents and belongings back. My husband threatened me on several occasions that he is very resourceful and can cause any harm to me. My husband has most likely misappropriated my funds and investments. My husband's family who kept on assuring me that everything will be sorted but they fooled me to get most to stop taking any action. I have been threatened regularly by my husband and his accomplices for life, safety and wellbeing of myself and my children. Therefore, I request yourself to considers the criminal activities done by my husband and his friends which involves various kinds of severe criminal activities which needs to be thoroughly investigated and necessary action should be taken against my husband and his accomplices for causing serious mental harassment, mental and physical tortures to me, harassment to my children; misappropriation of my investments, funds and financial resources, not giving my documents, financial and investment details and documents and misappropriation of my funds and I also humbly request you to provide myself and my children security as our lives are at great danger and my husband.

Thanking you in anticipation

Sd/-

Yours sincerely."

(Emphasis added)

It is the allegation of the wife in the complaint that she came across certain messages on the old phone of the petitioner/husband on 15-06-2020 in which there were several messages and WhatsApp chats which were highly intimidating and humiliating and a shocker to her. It is the allegation that the petitioner/husband had relationship with prostitutes and indulging in the unlawful activities and some photographs of her family were also in the phone. The wife construing this to be criminal activities and need to be thoroughly investigated registers the complaint. Not one sentence of cruelty for the purpose of demand of dowry, as obtaining under Section 498A of the IPC is even uttered in the complaint. Instances that happened on 15-06-2020 are sought to be projected as allegations on 08-10-2023, clearly 3½ years after the incident and after the talks between the two for settlement of permanent alimony or the custody of children failed. This complaint become a crime in Crime No.295 of 2023 for offences under Section 498A and 506 of the IPC.

13. The wife does not stop at registering the crime even though the crime is registered on 08-10-2023. The very next day

i.e., on 09-10-2023 the wife initiates proceedings seeking maintenance under Section 125 of the Cr.P.C., in Criminal Miscellaneous No.851 of 2023. Two days thereafter on 11-10-2023 invoking Section 12 of the Domestic Violence Act, she files Criminal Miscellaneous No.153 of 2023 seeking monthly maintenance at ₹2/- lakhs and interim maintenance, in all at ₹40/- lakhs. This is the third proceeding initiated by the wife. Soon after initiation of these proceedings, it appears the wife began to publish contents of the complaint in the media. Therefore, the petitioner had to file O.S.No.6779 of 2023 against the wife and media houses not to publish any item in Crime No.295 of 2023. The said suit is pending consideration with an injunction operating.

14. The petitioner/husband then had to initiate proceedings for offences punishable under Section 420 of the IPC *inter alia* in Crime No.176 of 2023 and two other proceedings – one in G & W.C. No.30 of 2023 and M.C. petition in M.C.No.1688 of 2024 seeking restitution of conjugal rights. Therefore, there are seven proceedings between the husband and the wife. The issue now would be whether the complaint so registered by the wife against

the husband quoted *supra* would make out an offence under Section 498A of the IPC. Section 498A reads as follows:

"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."**

(Emphasis supplied)

Section 498A requires the husband or any member of his family to meet out such cruelty on the wife against a demand. Demand can be of any kind but should touch upon demand for dowry. If the complaint is pitted against ingredients of Section 498A, the unmistakable inference would be that it does not have even an iota of ingredients as necessary under Section 498A of the IPC.

15. The learned senior counsel appearing for the respondent/wife admits that it does not have ingredients of physical torture, but all the ingredients are of mental torture. In this regard she has placed reliance upon several judgments viz.,

- (i) **RUPALI DEVI v. STATE OF UTTAR PRADESH**
– (2019) 5 SCC 384;
- (ii) **LAXMAN RAM MANE v. STATE OF MAHARASHTRA**
– (2010) 13 SCC 125;
- (iii) **K.PREMA S.RAO v. YADLA SRINIVASA RAO**
– (2003) 1 SCC 217;
- (iv) **MOHD.HOSHAN, A.P v. STATE OF A.P.**
– (2002) 7 SCC 414;
- (v) **STATE OF WEST BENGAL v. ORILAL JAISWAL**
– AIR 1994 SC 1418; and
- (vi) **DHONDIBA DEVRAO WADWALE v. STATE OF MAHARASHTRA**
– 2022 SCC OnLine Bom.22.

A perusal at the judgments cited by the learned senior counsel for the wife to buttress her submission with regard to mental cruelty would show that they are all judgments rendered on the facts of those cases. There can be no qualm about the principles laid down therein *qua* the facts of those cases.

16. The Apex Court in the case **RUPALI DEVI** *supra* holds that certain acts of mental torture would come within the ambit of domestic violence and those domestic violence ingredients can be paraphrased into the ingredients under Section 498A of the IPC. Again, in **LAXMAN RAM MANE** *supra* the case was concerning Section 498A and 306 of the IPC about mental torture in the form of illicit relationship of a married man with another women amounting to cruelty under Section 498A of the IPC. All the other judgments relied on are an amalgam of offences under Sections 306 and 498A of the IPC and all of them would touch upon illicit relationship. The issue in the *lis* is not with regard to physical torture is an admitted fact. Whether it amounts to mental torture and that mental torture would come within the ambit of Section 498A in the peculiar facts of this Court is what is required to be noticed.

17. As observed hereinabove, there is no allegation of torture. The allegation is about 3½ years ago the wife had seen messages

in the phone of the husband. The offence did not spring on that day. 3½ years passed by. Multiple proceedings for settlement between the parties happen. The settlement does not fructify into what the wife wanted. Therefore, the complaint has sprung. This is the only inference that can be drawn against the wife in the case at hand. The link in the chain of events are vindictive of the aforesaid inference as between 05-10-2020 up to 07-10-2023 the submissions are with regard to multiple proceedings and drafting of a settlement agreement even. Since settlement agreement was not taken to its logical conclusion, one after the other proceedings are initiated by the wife firstly on 08-10-2023 and subsequently on 09-10-2023 and 11-10-2023. The petitioner/husband in retaliation has registered several proceedings. Finding no ingredient that is even present to its remotest sense to drive home the offence under Section 498A, if further proceedings are permitted to be continued, it would run foul of plethora of judgments rendered by the Apex Court not concerning other members of the family but concerning the husband even.

18. The Apex Court in the case of **ACHIN GUPTA v. STATE OF HARYANA**¹ considers identical circumstance and obliterates proceedings against the husband. The Apex Court in the said judgment has held as follows:

"....

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the criminal proceedings should be quashed?

16. The Appellant and the Respondent No. 2 got married in October 2008. The couple lived together for more than a decade and in the wedlock a child was born in March 2012.

17. We take notice of the fact that the Appellant filed a divorce petition in July 2019 on the ground of cruelty. The divorce petition was withdrawn as the Appellant was finding it difficult to take care of his child, while travelling all the way to Hisar on the dates fixed by the Court. The Appellant's mother had to file a domestic violence case against the First Informant in October 2020 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

18. The plain reading of the FIR and the charge-sheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

¹ 2024 SCC OnLine SC 759

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr. P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any

proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

22. Once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet. There is nothing in the words of Section 482 of the Cr. P.C. which restricts the exercise of the power of the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet.

23. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings:—

- (i) *where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
- (ii) *where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
- (iii) *where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

24. This Court, in the case of *State of A.P. v. Vangaveeti Nagaiah*, (2009) 12 SCC 466 : AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:—

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not

prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the

allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie*, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

26. In *Preeti Gupta v. State of Jharkhand*, reported in 2010 Criminal Law Journal 4303 (1), this Court observed the following:—

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 which reads as under:

"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."*

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper

deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of

common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

(Emphasis supplied)

27. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of *Arnesh Kumar v. State of Bihar*, (Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014). In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before this Court, having failed to obtain the same from the High Court. In that context, the observations made by this Court in paras 6, 7 and 8 respectively are worth taking note of. They are reproduced below:—

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is

greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Penal Code, 1860. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr. P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr. P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. ..."

(Emphasis Supplied)

28. In the case of *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741, this Court observed as under:—

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in (2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of *B.S. Joshi v. State of Haryana* it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman

from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr. P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

(Emphasis supplied)

29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr. P.C. as once there are allegations disclosing the commission of a cognizable offence then whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of *Bhajan Lal* (supra). The category 7 as laid reads thus:—

"(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr. P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial

disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of

proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in *Kaslefsky v. Kaslefsky*, [1950] 2 All ER 398 observed as under:—

"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby

the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in *American Jurisprudence* 2nd edition Vol. 24 page 206. It reads thus:—

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."

(Emphasis supplied)

35. In one of the recent pronouncements of this Court in *Mahmood Ali v. State of U.P.*, 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr. P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in *Preeti Gupta* (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

"34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common

knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

38. In the aforesaid context, we looked into Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in *Preeti Gupta* (supra). Sections 85 and 86 respectively are reproduced herein below:

"Husband or relative of husband of a woman subjecting her to cruelty.

85. 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.

Cruelty defined.

86. For the purposes of section 85, "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."*

39. The aforesaid is nothing but verbatim reproduction of Section 498A of the IPC. The only difference is that the Explanation to Section 498A of the IPC, is now by way of a separate provision, i.e., Section 86 of the Bhartiya Nyaya Sanhita, 2023.

40. We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force."

(Emphasis supplied)

The similarity between the facts in the case at hand and the facts before the Apex Court can be found not in one paragraph but in several paragraphs.

19. A little before the said judgment, the Apex Court in the case of **ABHISHEK v. STATE OF MADHYA PRADESH**² has held as follows:

"....

² 2023 SCC OnLine SC 1083

12. The contours of the power to quash criminal proceedings under Section 482 Cr. P.C. are well defined. In *V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu* [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In *Neeharika Infrastructure (P). Ltd. v. State of Maharashtra* [**Criminal Appeal No. 330 of 2021, decided on 13.04.2021**], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr. P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866) and *State of Haryana v. Bhajan Lal* [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *KahkashanKausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased

tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)* on the legal principles applicable apropos Section 482 Cr. P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr. P.C. or the

extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In *Bhajan Lal* (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr. P.C. could be exercised. Para 102 of the decision reads as follows:

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do

not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

18. Applying the aforestated edicts to the case on hand, we may take note of certain glaring inconsistencies and discrepancies. Though Bhawna had earlier alleged that her mother-in-law, Kusum Lata, and her brother-in-law, Abhishek, had taken away all her jewellery after her marriage on the pretext of safekeeping, she specifically stated in her deposition before the Family Court, Narsinghpur, in Civil Suit No. 153A of 2015, that her entire stridhan jewellery was with Nimish and in spite of repeated demands, he was not returning it to her.

Further, during her cross-examination therein, she admitted that she had made a complaint to the High Court against Abhishek. The complaint was styled as an anonymous one, but Bhawna voluntarily owned up to being its author. This aspect bears out her animosity against her in-laws and more particularly, Abhishek.

19. The most significant aspect to be taken note of presently is that Bhawna admittedly parted ways with her matrimonial home and her in-laws in February, 2009, be it voluntarily or otherwise, but she did not choose to make a complaint against them in relation to dowry harassment till the year 2013. Surprisingly, FIR No. 56 dated 09.02.2013 records that the occurrence of the offence was from 02.07.2007 to 05.02.2013, but no allegations were made by Bhawna against the appellants after she left her matrimonial home in February, 2009. Significantly, Bhawna got married to Nimish on 02.07.2007 at Indore and went to Mumbai with him on 08.07.2007. Her interaction with her in-laws thereafter seems to have been only during festivals and is stated to be about 3 or 4 times. Sourabh, an architect, was stationed at Delhi since the year 2007 and no specific allegation was ever made against him by Bhawna. In fact, she merely made a general allegation to the effect that he also tortured her mentally and physically for dowry. No specific instance was cited by her in that regard or as to how he subjected her to such harassment from Delhi. Similarly, Abhishek became a judicial officer 6 or 7 months after her marriage and seems to have had no occasion to be with Bhawna and Nimish at Mumbai. His exposure to her was only when she came to visit her in-laws during festivals. Surprisingly, Bhawna alleges that at the time of his own marriage, Abhishek demanded that Bhawna and her parents should provide him with a car and Rs. 2 lakhs in cash. Why he would make such a demand for dowry, even if he was inclined to commit such an illegality, from his sister-in-law at the time of his own marriage is rather incongruous and difficult to comprehend. Further, the fact that Bhawna confessed to making a vicious complaint against Abhishek to the High Court clearly shows that her motives were not clean insofar as her brother-in-law, Abhishek, is concerned, and she clearly wanted to wreak vengeance against her in-laws. The allegation levelled by Bhawna against her mother-in-law, Kusum Lata, with regard to how she taunted

her when she wore a maxi is wholly insufficient to constitute cruelty in terms of Section 498A IPC.

20. We may also note that Bhawna herself claimed that Nimish came to her brother's wedding in 2012, but she has no details to offer with regard to any harassment for dowry being meted out to her by her mother-in-law and her brothers-in-law after 2009. As noted earlier, even for that period also, her allegations are mostly general and omnibus in nature, without any specific details as to how and when her brothers-in-law and mother-in-law, who lived in different cities altogether, subjected her to harassment for dowry.

21. Most damaging to Bhawna's case is the fact that she did nothing whatsoever after leaving her matrimonial home in February, 2009, and filed a complaint in the year 2013 alleging dowry harassment, just before her husband instituted divorce proceedings.

22. Given the totality of the facts and circumstances, we are of the considered opinion that Bhawna's allegations against the appellants, such as they are, are wholly insufficient and, *prima facie*, do not make out a case against them. Further, they are so farfetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed against them. In effect, the case on hand falls squarely in categories (1) and (5) set out in *Bhajan Lal* (supra). Permitting the criminal process to go on against the appellants in such a situation would, therefore, result in clear and patent injustice. This was a fit case for the High Court to exercise its inherent power under Section 482 Cr. P.C. to quash the FIR and the consequential proceedings."

(Emphasis supplied)

In both the afore-mentioned judgments the Apex Court was considering the offence against the husband. The Apex Court holds that if ingredients of Section 498A are not met, the proceedings

against the husband or the family members could not be permitted to be continued. Therefore, the law as laid down by the 3 Judge Bench of the Apex Court in **ABHISHEK** and **ACHIN GUPTA** would prevail over the judgment rendered at an earlier point in time.

20. Considering all the aforementioned judgment, the Apex Court in a later judgment in **DARA LAKSHMI NARAYANA v. STATE OF TELANGANA**³, has held as follows:

"....

8. Learned counsel for the appellants submitted that the appellants never demanded any dowry from respondent No. 2. Respondent No. 2 in fact used to leave the matrimonial house uninformed. In fact, on one such occasion when she left the matrimonial house on 03.10.2021, appellant No. 1 made a police complaint on 05.10.2021. When the police found her whereabouts, she was allegedly living with someone. Respondent No. 2 after being counselled, returned to her matrimonial house. It was further submitted that respondent No. 2 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting to close the complaint made by appellant No. 1 wherein she admitted that she had left her matrimonial house after quarrelling with appellant No. 1 because of one Govindan, with whom she was talking over the phone for the past ten days continuously. She also stated that she would not repeat such acts in future. Learned counsel for the appellants further submitted that respondent No. 2 again left the matrimonial house leaving appellant No. 1 and children behind. It was submitted that having no other option, appellant No. 1 issued a legal notice dated 13.12.2021 to respondent No. 2 seeking

³ 2024 SCC OnLine SC 3682

divorce by mutual consent. Therefore, it was argued that only as a counterblast, the present FIR has been lodged by respondent No. 2. on 01.02.2022. Insofar as appellant Nos. 2 to 6 are concerned, learned counsel for the appellants submitted that no specific allegation is made against them in the FIR. It was further submitted that appellant Nos. 2 to 6 did not live in the matrimonial house of the couple and have been unnecessarily dragged into this case. Therefore, it was submitted that the present case is a fit case for quashing the FIR and accordingly prayed that this Court may set-aside the impugned order dated 16.02.2022 and quash the criminal proceedings pending against the appellants herein arising out of FIR No. 82 of 2022 dated 01.02.2022.

9. Per contra, the learned counsel for the respondent-State submitted that on a perusal of the FIR, it would reveal that a *prima facie* case has been made out against the appellants. It was submitted that, as per the FIR, respondent No. 2 was harassed both physically and mentally for want of additional dowry and that appellant No. 1 used to come home in a drunken state and used to have an illicit affair with one Mounika. Learned counsel for the respondent-State submitted that the father of respondent No. 2 was examined as LW3 who stated in the examination that at the time of marriage, he gave Rs. 10 lakhs and 10 tolas of gold as dowry. It was further submitted that after the marriage, appellant No. 1 used to harass and abuse respondent No. 2 and appellant Nos. 2 to 6 used to provoke and instigate appellant No. 1. Hence, learned counsel for the respondent-State argued that the High Court, vide impugned order, was justified in declining to quash the criminal proceedings pending against the appellants herein arising out of FIR No. 82 of 2022 dated 01.02.2022 and prayed for the dismissal of the present appeal as well.

10. Having heard the learned counsel for the respective parties and having perused the material on record, the only question that arises for our consideration is whether FIR No. 82 of 2022, dated 01.02.2022, lodged against the appellants herein should be quashed.

11. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 ("*Bhajan Lal*"), this Court formulated the parameters under which the powers under Section 482 of the CrPC could be

exercised. While it is not necessary to revisit all the parameters, a few that are relevant to the present case may be set out as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

x xx

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In the instant case, the allegations in the FIR are under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

13. Section 498A of the IPC deals with offences committed by the husband or relatives of the husband subjecting cruelty towards the wife. The said provision reads as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.— Whoever, being the husband or the relative of the husband of a woman,

subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means—

- (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.”

14. Further, Sections 3 and 4 of the Dowry Act talk about the penalty for giving or taking or demanding a dowry.

“3. Penalty for giving or taking dowry.—

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

- (a) presents which are given at the time of a marriage to the bride without any demand having been made in that behalf:

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

- (b) presents which are given at the time of a marriage to the bridegroom without any demand having been made in that behalf:

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.— If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

15. An offence is punishable under Section 498A of the IPC when a husband or his relative subjects a woman to cruelty, which may result in imprisonment for a term extending up to three years and a fine. The Explanation under Section 498A of the IPC defines "cruelty" for the purpose of Section 498A of the IPC to mean any of the acts mentioned in clauses (a) or (b). The first limb of clause (a) of the Explanation of Section 498A of the IPC, states that "cruelty" means any wilful conduct that is of such a nature as is likely to drive the woman to commit suicide. The second limb of clause (a) of the Explanation of Section 498A of the IPC, states that cruelty means any wilful conduct that is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Further, clause (b) of the Explanation of Section 498A of the IPC states that cruelty would also include harassment of the woman where such

harassment is to coerce 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.

16. Further, Section 3 of the Dowry Act deals with penalty for giving or taking dowry. It states that any person who engages in giving, taking, or abetting the exchange of dowry, shall face a punishment of imprisonment for a minimum of five years and a fine of not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks of penalty for demanding dowry. It states that any person demanding dowry directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

17. The issue for consideration is whether, given the facts and circumstances of the case and after examining the FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the appellants arising out of FIR No. 82 of 2022 dated 01.02.2022 under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

18. A bare perusal of the FIR shows that the allegations made by respondent No. 2 are vague and omnibus. Other than claiming that appellant No. 1 harassed her and that appellant Nos. 2 to 6 instigated him to do so, respondent No. 2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

19. Further, the record reveals that respondent No. 2 on 03.10.2021 left the matrimonial house leading appellant No. 1 to file a police complaint on 05.10.2021. When the police officials traced her, respondent No. 2 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting to close the complaint made by appellant No.

1. In the said letter, respondent No. 2 admitted that she left her matrimonial house after quarrelling with appellant No. 1 as she was talking to a person by name Govindan over the phone for the past ten days continuously. She further admitted that appellant No. 1 was taking good care of her. She also stated that she will not engage in such actions in future. Despite that, in 2021 itself, respondent No. 2 once again left the matrimonial house leaving appellant No. 1 and also her minor children.

20. Losing hope in the marriage, appellant No. 1 issued a legal notice to respondent No. 1 seeking divorce by mutual consent on 13.12.2021. Instead of responding to the said legal notice issued by appellant No. 1, respondent No. 2 lodged the present FIR 82 of 2022 on 01.02.2022 registered with Neredmet Police Station, Rachakonda under Section 498A of the IPC and Sections 3 and 4 of the Dowry Act.

21. Given the facts of this case and in view of the timing and context of the FIR, we find that respondent No. 2 left the matrimonial house on 03.10.2021 after quarrelling with appellant No. 1 with respect to her interactions with a third person in their marriage. Later she came back to her matrimonial house assuring to have a cordial relationship with appellant No. 1. However, she again left the matrimonial house. When appellant No. 1 issued a legal notice seeking divorce on 13.12.2021, the present FIR came to be lodged on 01.02.2022 by respondent No. 2. Therefore, we are of the opinion that the FIR filed by respondent No. 2 is not a genuine complaint rather it is a retaliatory measure intended to settle scores with appellant No. 1 and his family members.

22. Learned counsel for respondent No. 1 State contended that a *prima facie* case was made out against the appellants for harassing respondent No. 2 and demanding dowry from her. However, we observe that the allegations made by respondent No. 2 in the FIR seem to be motivated by a desire for retribution rather than a legitimate grievance. Further, the allegations attributed against the appellants herein are vague and omnibus.

23. Respondent No. 2 has not contested the present case either before the High Court or this Court. Furthermore, it is noteworthy that respondent No. 2 has not only deserted appellant No. 1 but has also abandoned her two children as well, who are now in the care and custody of appellant No. 1. The counsel for the appellants has specifically submitted that respondent No. 2 has shown no inclination to re-establish any relationship with her children.

24. Insofar as appellant Nos. 2 to 6 are concerned, we find that they have no connection to the matter at hand and have been dragged into the web of crime without any rhyme or reason. A perusal of the FIR would indicate that no substantial and specific allegations have been made against appellant Nos. 2 to 6 other than stating that they used to instigate appellant No. 1 for demanding more dowry. It is also an admitted fact that they never resided with the couple namely appellant No. 1 and respondent No. 2 and their children. Appellant Nos. 2 and 3 resided together at Guntakal, Andhra Pradesh. Appellant Nos. 4 to 6 live in Nellore, Bengaluru and Guntur respectively.

25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos. 2 to 6, who are the members of the family of appellant No. 1 have been living in different cities and have not resided in the matrimonial house of appellant No. 1 and respondent No. 2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

26. In fact, in the instant case, the first appellant and his wife i.e. the second respondent herein resided at Jollarpeta,

Tamil Nadu where he was working in Southern Railways. They were married in the year 2015 and soon thereafter in the years 2016 and 2017, the second respondent gave birth to two children. Therefore, it cannot be believed that there was any harassment for dowry during the said period or that there was any matrimonial discord. Further, the second respondent in response to the missing complaint filed by the first appellant herein on 05.10.2021 addressed a letter dated 11.11.2021 to the Deputy Superintendent of Police, Thirupathur Sub Division requesting for closure of the said complaint as she had stated that she had left the matrimonial home on her own accord owing to a quarrel with the appellant No. 1 because of one Govindan with whom the second respondent was in contact over telephone for a period of ten days. She had also admitted that she would not repeat such acts in future. In the above conspectus of facts, we find that the allegations of the second respondent against the appellants herein are too far-fetched and are not believable.

27. We find that the High Court noted that there were also allegations against respondent No. 2 and matrimonial disputes are pending between the parties. Therefore, the High Court came to the conclusion that custodial interrogation of the appellants was not necessary and protected the personal liberty of the appellants directing the Investigation Officer not to arrest the appellants till the completion of the investigation and filing of the charge-sheet. Albeit the said findings and observations, the High Court ultimately refused to quash the criminal proceedings against the appellants.

28. The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm-twisting tactics by a wife and/or her family. Sometimes,

recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.

29. We are not, for a moment, stating that any woman who has suffered cruelty in terms of what has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any criminal proceeding. That is not the intention of our aforesaid observations but we should not encourage a case like as in the present one, where as a counterblast to the petition for dissolution of marriage sought by the first appellant-husband of the second respondent herein, a complaint under Section 498A of the IPC is lodged by the latter. In fact, the insertion of the said provision is meant mainly for the protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry. However, sometimes it is misused as in the present case.

30. In the above context, this Court in *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 observed as follows:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts."

31. Further, this Court in *Preeti Gupta v. State of Jharkhand* (2010) 7 SCC 667 held that the courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

32. We, therefore, are of the opinion that the impugned FIR No. 82 of 2022 filed by respondent No. 2 was initiated with ulterior motives to settle personal scores and grudges against appellant No. 1 and his family members i.e., appellant Nos. 2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in ***Bhajan Lal***. Therefore, the High Court, in the present case, erred in not exercising the powers available to it under Section 482 CrPC and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants."

(Emphasis supplied)

The Apex Court holds that the crime registered by the wife was initiated with ulterior motives to settle scores and grudges against the husband and the family members.

21. In the light of the law laid down by the Apex Court in the afore-quoted judgments, permitting further proceedings against the husband would become an abuse of the process of law and putting a premium on the litigative persistence and arm-twisting tactics of

the wife. Therefore, Writ Petition No.28591 of 2023 deserves to be allowed and the crime set side.

22. In Writ Petition No.3809 of 2024 the complainant is the husband. The petitioners are the wife and other members. It springs from a complaint registered on 25-11-2023 by the husband. The complaint becomes a crime in Crime No.176 of 2023 for offences punishable under Sections 420, 406, 403, 109, 384 and 34 of the IPC. The ingredients as projected by the petitioner/husband against the wife in Crime No.176 of 2023 are that the wife went on extorting money on one pretext or the other and has filed false affidavit before the Court for the purpose of getting maintenance and has taken maintenance up to ₹1/- crore as on today. In the considered view of the Court, there cannot be an offence of extortion when the wife initiates proceedings for maintenance and the concerned Court grants maintenance. Those are legal proceedings, pursuant to which the husband is legally bound to pay, unless it is altered or modified by the superior Court. Insofar as the offence of cheating and criminal breach of trust is concerned between the husband and the wife for the purpose of payment of

maintenance, there cannot be a fact that the husband has lured the wife or the wife has lured the husband into any act that would become an ingredient of Section 420 or 406 of the IPC. Therefore, no offence against the wife or other accused in Crime No.176 of 2023 is made out. Therefore, both these petitions deserve to succeed and the respective crimes obliterated, failing which it would become an abuse of the process of law and result in miscarriage of justice.

23. For the aforesaid reasons, the following:

ORDER

- (i) Both the Writ Petitions are allowed.
- (ii) FIR in Crime No.295 of 2023 pending before the 7th Additional Chief Metropolitan Magistrate Court, Bengaluru City stands quashed.
- (iii) FIR in Crime No.176 of 2023 pending before the 6th Judicial Magistrate First Class, Mangalore City also stands quashed.
- (iv) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the cases of petitioners in both writ

petitions under Section 482 of Cr.P.C. and the same shall not bind or influence any other proceedings between the same parties or others.

Sd/-

JUSTICE M.NAGAPRASANNA

Bkp
CT: MJ