2024 INSC 369

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2379 OF 2024
(ARISING OUT OF SLP (CRL.) NO. 4912 OF 2022)

ACHIN GUPTA ……APPELLANT

VERSUS

STATE OF HARYANA & ANR. ……RESPONDENT(S)

J U D G M E N T

J. B. PARDIWALA, J.:

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab & Haryana dated 05.04.2022 in the Criminal Main No. 14198-2022 (**CRM-M-14198-2022**) filed by the Appellant herein (sole accused in the chargesheet) by which the High Court rejected the petition & thereby declined to quash the chargesheet dated 13.10.2021 for the offences punishable under Section 323, 406, 498A and 506 of the Indian Penal Code, 1860 (for short, the "**IPC"**) arising from the First Information Report No. 95 of 2021 lodged by the

Respondent No. 2 (wife of the Appellant) at the Urban Estate Hisar Police Station, District Hisar.

FACTUAL MATRIX

3. The FIR dated 09.04.2021 reads thus: -

> *"1. That the First Informant Tanu Gupta wife of Achin Gupta and daughter of Harish Manocha, is a resident of House No.1368, Urban Estate - 2, Hisar, Tehsil and District Hisar and is a peace loving and law abiding woman and my marriage was solemnized according to Hindu rites and rituals with Accused No.1 on 09.10.2008 at New Delhi. My family had spent about thirty lakhs rupees in my engagement ceremony and marriage as per the direction of the accused persons towards furniture, jewellery, clothes and other household articles. At the time of marriage, my family handed over all her jewellery and stridhan to the accused persons saying that it is the stridhan of the first informant and whenever the first informant will need her stridhan, it has to be given back to her whereupon the accused persons assured the family of the first informant that whenever the first informant will need it, they will give it back to her.*
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> *2. That after the marriage, the first informant and Accused No.1 lived as husband and wife at B-39, Phase-2, Vikas Nagar, Hastsaal, Uttam Nagar, New Delhi 110059 and the first informant performed all the duties of a wife and out of the said wedlock a boy, namely, Advay aged 8 years was born, who is presently residing with Accused No.1.*
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> *3. That after few days of the marriage, when the first informant went to her matrimonial house at that time the Accused persons taunted that your family has lowered down our image in the society and before relatives by giving less dowry and said to the first informant that at least your family should have given a big car in the dowry because Accused No.1 is doing a good job and almost earns Rs. 1,50,000/- monthly and for him, we were getting*

proposal from rich families who would have spent cores of rupees on the marriage. On this the first informant said that her family had already given 5 lakhs rupees in cash for purchasing the car and have already spent more than their capability and now they cannot fulfil your demand for more dowry whereupon accused persons threatened the first informant saying that if you want to live with us then you have to get our above demand for the dowry fulfilled by your parents otherwise you will not be allowed to live in this house.

4. *That whenever the first informant cooked food in the matrimonial home, the accused persons always used to point out unnecessary defects in the food and taunted the first informant that she does not know cooking. To harass and upset the first informant, the accused persons deliberately asked her to make various dishes and when the first informant showed her inability, the accused persons used to abuse and beat her.*

5. *That Accused No.3 is the mother-in-law of the first informant, who is a teacher and she used to leave the house at 7:00 hrs in the morning for the school and the first informant used to do all household works and when her mother-in-law returned from the school, she deliberately used to point out defects in her work and used to taunt the first informant that your family should have given gold bangles to me and now, you would have to bring gold bangles from your family and when the first informant tell her that her family had already spent a lot over her marriage, then she used to abuse and give beatings to the first informant.*

6. *That Accused No.4 is the sister-in-law of the first informant who used to say that your family should have given a diamond set for me in the marriage which they have not given and now if you want to live in this house you have to bring diamond set for me otherwise I will not let you live in the house and besides this, Accused No.4 treated the first informant like a domestic servant and used to abuse and give beatings to the first informant over petty issues and instigated the other members of the family against the first informant. That the first informant always performed the*

duties of an ideal wife with utmost honesty and sincerity and the first informant had always lived with Accused No.1 with love and always fulfils his demands and demands of the other accused persons. That the first informant used to do all household work at her matrimonial house in whatever manner the accused persons used to ask her. In this way, there is no fault on the part of the first informant. That Accused No.1 had never treated the first informant with love and care rather he used to treat the first informant with cruelty. Beating and abusing the first informant on account of demand of dowry was a daily routine of the Accused persons.

7. *That Accused No. 1 is an alcoholic. Who use to torture, abuse, beat the first informant and treated her inhumanely on account of less dowry under the effect of alcohol. Whenever the first informant used to tell her parents-in law Accused No. 2 and 3 about this they said that until you do not get our demand of dowry fulfilled by your parents till then you have to bear all this. The Accused persons used to treat the first informant like a domestic servant. The first informant was not allowed to even make phone calls to her family and Accused No. 1 deliberately had hacked the phone of the first informant and she was not allowed to step out of the house. Being a Hindu woman the first informant tolerated all tortures of the Accused with a hope that one day they will mend their ways and the first informant's will live in the house happily but the same did not happen rather the behaviour of the Accused persons became more cruel towards the first informant.*

8. *That Accused No. 5 is the brother-in-law of the first informant and he resides in Delhi. After the marriage he used to come to the matrimonial house of the first informant alongwith Accused No. 4 and used to instigate Accused No. 1 to 3 against the first informant. When the first informant used to oppose this he used to hurl abuses to the first informant.*

9. *That during this period the Accused persons have beaten the first informant multiple times for demand of dowry and whenever the accused persons threw out the first informant out of the house every time the family of the Petitioner used*

to come along with panchas of the society and sat with the Accused persons and in every meeting at least something was given to the Accused persons but the Accused persons neither left their demand for dowry nor they changed their behaviour.

10. *That on 02.03.2012 a son Advay was born to the first informant, the Accused persons said to the first informant that now in the traditional gifts you have to fulfil our demand for dowry. In the traditional gift the family of the first informant gave 5 tolas of gold ornaments, 51 thousand rupees in cash, and spent about 1 lakh rupees on clothing, sweets and other items. But the Accused persons were not satisfied with the articles gifted at that time and were adamant on their demand.*

11. *That when the first informant was at her matrimonial house she was posted on the post of Assistant Professor in a college at Delhi but Accused No. 1 to 3 used to snatch the whole salary of the first informant and even did not give pocket money to the first informant. Whenever the first informant demanded pocket money from Accused No. 1 he used to beat her and said that you take your expenses from your family. It is pertinent to mention here that even after the marriage the family of the first informant many times gave pocket money and money for other expenses. Before going for her job the first informant used to do all household work and prepared lunch after waking up early in the morning and then she went to the college and after returning in the evening she used to do all household work.*

12. *That after the marriage, Accused No.3 and 4 pressurized the first informant that you have to wear saree because according to the tradition, the daughters-in-law used to wear sarees. When the first informant said that I am not able to do the household chores while wearing saree, they both used to beat and abuse the first informant.*

13. *That in 2014, the first informant came to know that her husband Respondent No.1 is in illicit relationship with Vandana Sharma and when the first informant objected to this Accused No. 1 used to abuse and beat her and used to threaten that if you will tell this fact to anyone, I will kill*

you. It is pertinent to mention here that on 19.03.2019 when Accused No. 1 had taken the abovenamed Vandana Sharma on a tour to Jaipur, Rajasthan at that time the first informant and her brother reached Khaskoti Hotel, Jaipur and there they found both of them in a compromising position and objected to it, Accused No. 1 slapped the first informant and said that why have you brought your family here. At that time the first informant and her family did not initiate any legal proceedings against the Accused No.1 because Accused No.1 had assured that after today he would not meet Vandana Sharma and after this the first informant went to her matrimonial house alongwith Accused No.1.

14. *That even after this Accused No. 1 used to talk with Vandana Sharma on phone and also met with her. While the first informant was at her matrimonial house, Accused No.1 filed a Divorce Petition on 25.07.2019 and which was filed on the basis of false and baseless grounds. In the said case when on 10.08.2019 a summon came at 6:30 in the morning, Accused No. 1 and 2 forcibly got the summons signed by the first informant and said that now we do not need you anymore and when the first informant objected to this, they had beaten the first informant. Thereafter the first informant called her father on phone and called him at her matrimonial house. Thereafter my family members came to my matrimonial house. Thereafter on 10.08.2019 the first informant filed an application against the Accused persons at Ranholla police station, Delhi and after that the first informant came to her parental house alongwith her father. Thereafter as per the order of the court the first informant again started living with Accused No. 1 at her matrimonial house.*

15. *That in March, 2020 during the pandemic of Covid-19, Accused No. 1 took the minor son with him and did not come home for so many days and before leaving the house Accused No. 1 had cut the water connection, and television connection of the house. Thereafter the first informant called her father on phone and called him at her house. Thereafter on 30.03.2020 the father of the first informant after getting the permission from police the father of the first informant brought her to her parental home from her*

> *matrimonial house. When the first informant informed Accused No. 1 over phone that I am going with my father then he said that who wants to keep you with him. Thereafter the family of the first informant held many meetings in the presence of elders and respectable members of the society and tried to convince the Accused persons that they should keep the first informant with them but the Accused persons were stubborn on their demands of dowry and had clearly refused to keep the first informant without fulfillment of their demand for dowry and when the first informant asked for her jewellery, stridhan and for her minor son, they clearly refused and threatened that if you file any complaint to the police against us we will kill the first informant.*
>
> *16. That in this way, the Accused persons have ignored the first informant due to their dowry demand and they have even not returned the first informant her stridhan and are threatening that if without fulfilling their demand of dowry, the first informant comes to their house, they will kill her. Thus, by giving this complaint, a request is being made to take immediate action against the accused persons for demanding dowry, giving beatings and threatening me to kill and my stridhan be recovered from the accused persons. It will be so kind of you."*

4. The plain reading of the aforesaid FIR would indicate that the Appellant and his family members are alleged to have demanded dowry and thereby caused mental and physical trauma to the First Informant. As stated in the FIR, the family of the First Informant had spent a large sum at the time of marriage and had also handed over her '*stridhan*' to the Appellant and his family. However, shortly after marriage, the Appellant and his family started harassing the First Informant on the false pretext that she had failed to discharge her duties as a wife and daughter-in-law and also pressurised her for some more dowry. The Appellant is alleged to be an alcoholic and used to regularly raise

his hands on the First Informant and treat her inhumanely. Allegedly, upon complaining to the Appellant's father and mother (Accused Nos. 2 & 3 in the FIR), they would take the side of their son i.e., the Appellant herein and would pressurize the First Informant to get something more towards dowry.

5. The First Informant has further alleged that her sister-in-law (Accused No. 4 in the FIR) used to harass her for a diamond set & would threaten that failing to get one, she would be driven out of her matrimonial home.

6. The First Informant was serving as an Assistant Professor and has alleged that the Appellant and his family would keep her entire salary. The Appellant would assault her whenever she would ask for money, saying that the First Informant should ask her family to bear her personal expenses.

7. It is also alleged that the Appellant was having an extra marital affair with one another woman, and he would threaten the First Informant with dire consequences had she told anyone of his affair. The Appellant continued with the extra marital affair for a long period & later filed a divorce petition in July 2019 on absolutely false and baseless grounds.

8. It is further alleged that during the initial days of the Covid-19 lockdown, the Appellant disconnected the water supply at their matrimonial home and took away their minor son. In such circumstances, the First Informant was left with no option but to leave her matrimonial home and return to her parents. Efforts

were made for some settlement however the Appellant and his family kept on insisting for more dowry and also refused to return her stridhan.

9. Upon the FIR referred to above being registered, the police carried out the investigation & proceeded to file chargesheet dated 13.10.2021, only against the Appellant herein. A closure report was filed against the remaining 4 accused. The filing of the chargesheet culminated in the Criminal Case No. CHI/1856/2021in the court of Judicial Magistrate, First Class, Hisar.

10. The Appellant herein went before the High Court, with a quashing petition for the purpose of getting the criminal proceedings quashed. The High Court *vide* its judgment & order dated 05.04.2022 (**'impugned order'**), declined to quash the criminal proceedings in exercise of its inherent powers under Section 482 of the Criminal Procedure Code, 1973 (for short, the "**Cr.P.C."**). The High Court made the following observations: -

> *"I have heard learned counsel for the petitioner at length and have gone through the record carefully.*
>
> ***The main thrust of the arguments raised by counsel for the petitioner is that the complainant had never been interested in living in the matrimonial home and she kept on pressurizing the petitioner for living separately from his family members. In order to achieve her objective she kept on causing harassment to the petitioner and his family members. However, a perusal of the allegations in the FIR would show that the petitioner and the family members gave taunting to the complainant for lowering down their image in the society. Demand of a car was also made. Complainant was taunted for not having been***

incurred sufficient expenditure on marriage by her parents. There are allegations of beating the complainant by her husband and the other family members. It has been specifically alleged that the petitioner is an alcoholic and has illicit relations with one Vandana Sharma.

The Hon'ble Supreme Court has settled the law time and again regarding exercising the jurisdiction under Section 482 Cr.P.C. for quashing of FIR. ***A reference in this regard may be made to the law settled in case of State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335, wherein following parameters have been given:-***

> *"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 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given 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 channelized 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 F.I.R. 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 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."

Further, Hon'ble Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 SCC Online SC 315 has held that quashing of FIR is an exception rather than an ordinary rule and

> ***the High Court should exercise the powers under Section 482 Cr.P.C. sparingly with circumspection.***
>
> ***Taking into consideration the above facts and circumstances of the present case in the light of the law settled, the present case does not fall in the category of cases for invoking the inherent powers under Section 482 Cr.P.C. The parameters laid down by the Hon'ble Supreme Court mandate that in a case where from the bare reading of the allegations in the FIR no cognizable offence is made out or it has been lodged to wreak the vengeance then the High Court may intervene. The veracity of the allegations levelled by the complainant can be assessed only after a thorough investigation and thereafter by the Trial Court on the basis of the evidence led before it.***
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> *Thus, this Court is of the opinion that the case of the petitioner does not qualify for exercising its jurisdiction under Section 482 Cr.P.C. Resultantly, the petition being devoid of any merit is hereby dismissed."*
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> (Emphasis supplied)

11. In view of the aforesaid, the Appellant is before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Mr. Yusuf, the learned counsel appearing for the Appellant herein made the following submissions: -

- The Appellant and his family had filed a divorce petition and also a domestic violence case against the First Informant in 2019 and 2020 respectively. As a counter blast to the same, the FIR No. 95 of 2021 dated 09.04.2021 came to be lodged after a period of more than 11 months from

the date the First Informant left her matrimonial home and that too, only after the service of summons to her in the domestic violence case. No plausible explanation has been offered for such delay.

- The FIR was filed with an oblique motive & by way of vengeance towards the Appellant. The First Informant and Appellant were married for over 12 years.
- The allegations in the FIR are too vague and general in nature. There is no specific allegation/incident of harassment levelled against the Appellant in the FIR.

SUBMISSIONS ON BEHALF OF THE FIRST INFORMANT/RESPONDENT NO. 2

13. Mr. Parveen Kumar Aggarwal, the learned counsel appearing for the First Informant herein made the following submissions:

- The Appellant and his family continuously demanded for additional dowry after the marriage. They used to beat the First Informant and take away her entire salary.
- After filing of the divorce petition, the Appellant stopped paying anything towards her maintenance and also disconnected the basic facilities such as water connection etc., leaving her with no option but to leave the matrimonial home and return to her parents house at Hisar.
- The Appellant had an affair with another woman. Only with a view to save the marriage, she kept quiet and did not inform about it to the others.

- The domestic violence case filed against the First Informant is absolutely frivolous and vexatious.
- The Appellant failed to inform this Court that he had withdrawn the divorce proceedings instituted against the First Informant.

SUBMISSIONS ON BEHALF OF THE STATE

14. Mr. Chritarth Palli, the learned counsel appearing on behalf of the State (Respondent No. 1 herein) made the following submissions:

- The Police upon registration of the FIR, conducted a fair investigation. On completion of the investigation, the proceedings against 4 out of the 5 accused came to be dropped. However, having regard to the nature of the allegations levelled, the investigating officer thought fit to file chargesheet against the Appellant.

ANALYSIS

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 chargesheet 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.

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*** reported in 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***, reported in (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.PC. 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 & Anr. v. State of U.P.*** reported in (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 reported in (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 & Ors. v. State of U.P & Ors.,*** 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.

41. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside.

42. The proceedings of CHI/1856/2021 arising from FIR No. 95 of 2021 dated 09.04.2021, pending in the Court of Judicial Magistrate, First Class, Hisar are hereby quashed.

43. Pending application(s) if any shall be disposed of.

44. We direct the Registry to send one copy each of this judgment to the Union Law Secretary and Union Home Secretary, to the Government of India who may place it before the Hon'ble Minister for Law and Justice as well as the Hon'ble Minister for Home.

……..J.
(J.B. Pardiwala)

…….J.
(Manoj Misra)

New Delhi;
Date: 3rd May, 2024.