

Reserved on :28.05.2024
Pronounced on :28.06.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1803 OF 2023

BETWEEN:

SRI. XXXXXXXXXXXX

... PETITIONER

(BY SRI C.V.SRINIVASA, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY STATION HOUSE OFFICER
BASAVANAGUDI WOMEN P.S.,
BENGALURU – 560 070
REPRESENTED BY
LEARNED PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . SMT. XXXXXXXXXXXX

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R-1;
SMT.XXXXXX, R-2 IN-PERSON)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.19072/2022 ON THE FILE OF THE HONBLE XXXVIITH ADDL. CHIEF METROPOLITAN MAGISTRATE, BANGALORE REGISTERED AGAINST THE PETITIONERS ARISING OUT OF CRIME NO.35/2022 REGISTERED AT THE FIRST RESPONDENT POLICE STATION FOR THE OFFENCES P/U/S 498A INDIAN PENAL CODE AND U/S 4 OF DOWRY PROHIBITION ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.05.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate at Bangalore arising out of Crime No.35 of 2022 registered for offences punishable under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('the Act' for short).

2. Facts adumbrated are as follows:-

The 2nd respondent/wife is the complainant and the petitioner/husband is accused No.1. The two get married on 29-05-2020. After about two months, the petitioner had to get back to United States of America as his H1B visa was to expire on 19-07-2020. Therefore, the petitioner leaves India to USA. It is the averment in the petition that on 21-01-2021, the complainant leaves the matrimonial house and then began to stay in a relatives' house. The petitioner further avers in the petition that efforts were made by the petitioner to get a visa so that the complainant could travel to USA. The first appointment that the petitioner took was on 13-10-2020. The complainant does not go to visa office for processing visa formalities. The second appointment was taken on 02-03-2021; again the complainant misses the same. On 07-05-2021 the 3rd appointment was taken. The complainant again misses the same. The 4th appointment was taken on 24-05-2021, the complainant misses the same too. The 5th appointment then emerges and visa is granted to the complainant on 22-09-2021. When the relationship between the two, according to the averment,

turned irreconcilable, the petitioner/husband comes to India and files a petition seeking divorce in M.C.No. 6838 of 2021 before the Family Court and later, on 22-12-2021 also files a complaint before the jurisdictional Police against the wife alleging several acts. It is then on 03-02-2022 the impugned complaint is registered by the 2nd respondent/wife against the petitioner which becomes a crime in Crime No.35 of 2022 for offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Act. The Police, after investigation, file a charge sheet before the concerned Court. The concerned Court, on the charge sheet, takes cognizance of the offences against the petitioner for the aforesaid offences and registers C.C. No. 19072 of 2022 in terms of its order dated 14-06-2022. It is the registration of criminal case is what has driven the petitioner to this Court in the subject petition.

3. Heard Sri C V Srinivasa, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Smt xxxx, respondent No.2 in person.

4. The learned counsel for the petitioner would contend that the petitioner and the complainant get to know each other through an online matrimony website, as the petitioner was residing in USA and the complainant in Bangalore. After approval of both the families, the two get married. The petitioner travels to USA for renewal of visa purposes. Five attempts were made by the petitioner by seeking appointments to get the complainant to USA. It is his averment that she refused to go to USA. The learned counsel would vehemently submit that the wife has left no stone unturned in painting the petitioner black by getting him tested for all the parts of the body, which all went in vain, as the petitioner was clean and had suffered no problem. The wife was never intending to live with the husband and all that she wanted is his money. All efforts of conciliation failed between the two, as the wife demanded ₹3/- crores in lieu of settlement. He would submit that nowhere in the complaint there is any indication of demand of dowry. Therefore, Section 498A of the IPC or even Sections 3 and 4 of the Act can spring into action in the case at hand is his emphatic submission.

5. Per contra, the 2nd complainant/wife who appears in person vehemently contends that the petitioner/husband suffers from Sexually Transmitted Disease ('STD'). It is her case that right from the beginning he had that problem and unless he would rectify it, she would not join him. Even before this court the complainant is candid in submitting that his rectal parts have some boils and, therefore, it is a case of some problem and the complainant projects it to be contagious. It is her further submission that the petitioner had blocked all channels of communication once he went to USA and he was never interested in taking her with him to USA. Even when she suffered an accident, the petitioner did not bother to get her treated or take her to USA later. He only comes back and registers a petition seeking annulment of marriage before the Family Court and tries to register a crime against the complainant. It is then the complainant had to resist by registering the impugned complaint. It is her submission that the husband earns more than ₹2/- crores annually and is not wanting to part with the amount on settlement. On all these counts the respondent/wife in person would submit that the husband should face trial for what he has done and it is for him to come out clean therein. The interim order

that is subsisting should be vacated or the petition itself be dismissed is her submission.

6. I have given my anxious consideration to the submissions made by the learned counsel for petitioner and the 2nd respondent in person and have perused the material on record.

7. The factum of marriage between the petitioner and the 2nd respondent is a matter of record. Immediately after the marriage the husband travelling to USA for the purpose of renewal of H1B visa is again a matter of record. The relationship between the two appears to have turned sore. The husband comes to the shores of the nation and seeks to register a petition seeking annulment of marriage before the Family Court on 23-12-2021 in M.C.No.6838 of 2021. Prior to registration of the said petition, a complaint before the Commissioner of Police is also said to have been filed by the husband against the complainant/wife. The complaint is appended as document No.2 to the I.A. seeking vacation of the interim order. The complaint is said to be closed after the statement of the wife. Then emerges the impugned complaint. Since the entire issue is

now triggered from the impugned complaint, I deem it appropriate to notice the said complaint. It reads:

*"Women's Police Station
3806, Thyagaraja Nagar, Banashankari, Bengaluru,
Karnataka 560070*

Respected Sir/Madam,

I, xxxxx(Age-30 years) and residing at- Address: #171, Srinivasan layout,BSK 3rd stage T.G.layout, 4th cross road, Near VBB Bakery Ittamadu, Bangalore 560085 Contact-9900110806.

I have married in 29-May-2020 to xxx, age 33 years, Son of RaghavendraBhat B(father) and SukanyaBhat(mother), who belongs to Address: # 72/1, 3rd floor, 8th main road, Dattatreyanagar, Hosakerehalli, Banashankari 3rd stage, Bangalore -560085. Contact-9686932594. He is working in cummins Inc- USA as Product Engineer-Address:Cummins Inc, Box 3005, Columbus, IN 47202-3005, United States.

xxxx had come to India for marriage on March -2020. Last visit was Dec-2019 for marriage discussions (3 months back). He told Due to covid first wave lockdown he visited early for marriage. There was an immediate lockdown after his visit (first wave). He was in quarantine in Bangalore – Hosakerehalli (dad's House). The marriage took place on May 29th 2020 at my grandmother's house Mundy-Ishwaramangala (Initially it was arranged in Hanumagirisabhabhavan- Ishwaramangala, Because of lockdown it was closed). We have arranged their stay for the night a day before the marriage in Hanumagiri-Ishwaramangala lodge.

After the marriage, we were staying in xxx's uncle- his dad's younger brother's house in udupi, There was a reception on June 3rd 2020 at UdupikodavoorShankaranarayana Temple, It's almost a week from the date of marriage. They have told because of covid temple is closed and waiting for the date. So it's late.

xxx behavioural changes- Initially he was pretending to be normal, in the first night, we were tired & both decided not to go sexual. First night was arranged in Udupi-at xxx's uncles house by them. From the second day, we were asked to stay in a room which had not proper latch to lock thereby not giving for privacy which is usually expected by the newly-wed couples. His behavior was neutral, not bothered about the privacy. He was accepting the situations without any second options, never thought of having a private stay in lodge. (That time lodges were open could have done the first night and the stay there if he is really wanting). He was not taking any responsibility. He was telling there is no option. I have given my anxious consideration to the submissions made by the learned Senior Counsel and other respective learned counsel and have perused the material on record. questioned, whether he is interested in me and also suggested to go for a mutual consent divorce if interested in the marriage, to which no response was forthcoming. I have observed that he has no interest to engage in sexual intercourse and trying to hide the problems. I have seen some infections on his genital areas and that resembles an STD (sexually transmitted disease).

I am hereby lodging a complaint against my Husband, for causing-Mental Harassment, dishonesty concealed his medical condition, & cheating and breaching the trust of me and had an Intention to insult and abuse me mentally & financially.

Details as below-

- 1. After the marriage, we stayed for 2 weeks in xxx's uncle's house. There was a naming ceremony of uncle's grandson June 10th 2020. Soon after that owing to the constant requests, he finally decided to leave Udupi and shift to Bangalore and while doing so, he constantly blamed me for this action.*
- 2. On reaching Bangalore, he continued to do work from home, his US timing was different, he used to work till 3 am at night and will be up at 11am in the morning. He was giving that excuse, telling me it's all my fault, and it's my drama, which makes him upset everyday & never interest to engage in sexual intercourse from the ver inception of the marriage and has always been able to avoid the*

same under the pretext of work or some other irrelevant situations marriage has not been consummated. He was forcing me to enlarge my vagina by fingering by myself (unnatural act). He told the same statement to my mother (Sandhya Rao)

3. *xxxx had forcefully made me vacate my rented house where I was staying before marriage while working, and made me stay in his father's house. After shifting there, he again told me to move to Whitefield, telling his dad is not comfortable and no peace. But I was not wishing to move to his father's house where there is no mother in law. It's naturally not easy for any girl.*
4. *They have also taken the streedhan from me - A pearl gold necklace weighing 8 grams, a green stone gold necklace weighing 10 grams, a long gold chain with pendant weighing 32.510 gram three pairs of gold bangles weighing 74 grams in total, three gold rings totally weighing 11.32 grams and his dad had asked all the savings of me to give to xxx while I leave India. They have made me to leave my job thereby putting me under financial pressure as well. I had been subjected to constant harassment and abuse from xxx and his father when I stayed in their house.*
5. *I had asked him what made him to get angry with me and let me know if there are any physical problems, for that he got offended and avoided me and decided to leave for America. xxx left India from 40th Day of marriage on July 6th 2020, He was behaving like I did something wrong to him, and he was upset while leaving & there was no proper good bye, there by putting me under immense stress and pain.*
6. *After that I was trying to get Visa in India to join him, but due to covid it was getting postponed. During this period, he was normal and was talking to me and asking the update on visa.*

7. *I stayed in his Dad's house for almost 8 months, but I was not comfortable to stay there. I had told xxx that I am planning to shift to rented house. There was no appointments showing for visa and the earliest date was Nov 2021, I had conveyed the same to xxx and told that I will shift to rented house in Jan 2021 and shifted.*
8. *After Shifting. There was a change in his behavior & initial 5 months he denied to help me financially. Then later on asking multiple times he had agreed to pay 20k as monthly expense till December-2021. During this time, I had asked him in good faith requested to get himself tested and treated so that we could live as normal couple but he refused that. I told him to visit India to solve things, He had explicitly stated that he will not be coming back to India & won't be having any discussions with elders on the same.*
9. *I was trying to get visa slots & got on-May-2021, conveyed the same to xxx, but once again it got cancelled due to covid, xxx had shown no interest to book the slots for visa interview. He was angry with me and giving silent treatment for long have asked xxx, to go couple therapy with me. But he was not interested in online session telling there is no time even on weekends. There is no changes has to be made with him. He told he doesn't need a therapy, telling me to go for individual therapy.*
10. *Me & my brother met with a bike accident in Aug-2021 and had some face injuries, was admitted to hospital PragathiPuttur along with my Brother, Brother had jaw displacement. I conveyed this to xxx, He was texting me for a day and from the next day there was no response, it was a weekend, His mobile data was off, and he told he had gone for hiking. There was no support from him financially.*

11. *He was constantly blaming me for not trying to book visa slots. Slots will be immediately booked once its open in India. I have told him to book because of the time difference, it's easy for him to book from US. But he had no interest to book, told me to book on my convenience. I got the slots for Sep-2021 and conveyed him. He had done all the arrangements for accommodation & flight booking to Kolkata & I got my visa on October 2nd week.*
12. *Nov-2021 I had communicated with xxx That My relatives are coming to India from US on ec-2021 and planning to go back on Jan-2022. Since it's the first time for me to travel to the US, my family wants me to go with my relatives. This I have communicated with xxx on whatsapp and it has been delivered to him. After that there is no response from him on any communication channel and there is an internet issue.*

My relatives who came to India from US - Indiana in the month Dec-2021, had again approached xxx through a message and phone calls before they come to India. But there was no response from him. He had completely ignored text messages and calls made by me & blocked me.

13. *I have approached his dad initially and visited his house with mom to solve this. Even tried contacting his uncle in udupi. But he spoke to us rudely, and told it's all my fault, & I got married for their property and money. The effect was worse.*

xxx was blaming for my behavior that I don't know how to behave with others, don't know how to talk and no common sense from the day of marriage. This caused me mental stress and I am trying, come out of that. I had seen he has some Infections that resembles STD (sexually transmitted disease) because of which he is not physical with me and trying to avoid sex.

He made me to leave my job immediately after marriage and made me dependent on him. Now I am living on my savings, since he doesn't support me financially

I am suffering from past 1 and half years, because of his unpredictable behavior and negligence. I was not treated as a wife right from the beginning of marriage. He is trying to manipulate every incident & had abused me emotionally, tried to have a control over me which caused depression and self-doubt.

I humbly request you to investigate this matter, protect and help me to come out of this to live life peacefully.

you're sincerely,

xxxxxxx."

A perusal at the complaint would indicate that the complainant laid emphasis upon infections of the husband on his genital areas which resembled as STD. Therefore, the husband is guilty of mental harassment dishonestly concealing his mental condition and breaching the trust of the wife. Minute details of certain allegations are made which are found in the complaint. The crux of the complaint was STD on him, making her leave her job after marriage and therefore, she would be dependent upon him. There is not a single sentence about the petitioner demanding dowry and indulging in cruelty for the purpose of demand of dowry. All the harassments that the complainant narrates are minor skirmishes

between the husband and the wife. The Police after investigation file a charge sheet. Column No.17 of the charge sheet reads as follows:

“ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಸಾಕ್ಷಿ-1 ರವರು ಎ1 ಆರೋಪಿಯನ್ನು ದಿನಾಂಕ:29/05/2020 ರಂದು ಗುರುಹಿರಿಯರ ಸಮ್ಮುಖದಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ಈಶ್ವರ ಮಂಗಲ ಗ್ರಾಮ್ ಪುತ್ತೂರು ಇಲ್ಲಿ ಮದುವೆಯಾಗಿದ್ದು ಮದುವೆಯಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ಸಾಕ್ಷಿ-4 ರವರು ಎ1 ಆರೋಪಿಗೆ 614 ಗ್ರಾಂ ಬೆಳ್ಳಿ ಸಾಮಾನುಗಳನ್ನು ಹಾಗೂ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ 160 ಗ್ರಾಂ ಚಿನ್ನಾಭರಣಗಳನ್ನು ಕೊಟ್ಟು ಮದುವೆಯನ್ನು ಮಾಡಿಕೊಟ್ಟಿರುತ್ತಾರೆ. ಮದುವೆಯಾದ ದಿನ ಎ1 ಆರೋಪಿ ಮತ್ತು ಸಾಕ್ಷಿ-1 ಇಬ್ಬರೂ ಉಡುಪಿಯಲ್ಲಿರುವ ಎ1 ಆರೋಪಿಯ ಚಿಕ್ಕಪ್ಪನ ಮನೆಗೆ ಹೋಗಿರುತ್ತಾರೆ, ದಿನಾಂಕ:03/06/2020 ರಂದು ಉಡುಪಿಯಲ್ಲಿ ಆರತಕ್ಷತೆ ನಡೆದಿರುತ್ತದೆ ಮತ್ತು ಉಡುಪಿಯಲ್ಲಿ ಸಾಕ್ಷಿ-1 ಮತ್ತು ಎ1 ಆರೋಪಿಯ ಮೊದಲ ರಾತ್ರಿ ಕಾರ್ಯಕ್ರಮವನ್ನು ಏರ್ಪಡಿಸಿದ್ದು ಎ1 ಆರೋಪಿ ಯಾವುದೋ ಒಂದು ಕಾರಣ ಹೇಳಿ ಮೊದಲ ರಾತ್ರಿ ಕಾರ್ಯಕ್ರಮವನ್ನು ಮುಂದೂಡಿರುತ್ತಾರೆ. 2 ವಾರಗಳ ನಂತರ ಎ1 ಆರೋಪಿ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಕರೆದುಕೊಂಡು ಬೆಂಗಳೂರಿನ ತಮ್ಮ ಮನೆಗೆ ಬಂದು ವಾಸವಾಗಿದ್ದು, ನಂತರವೂ ಎ1 ಆರೋಪಿ ಸಾಕ್ಷಿ-1 ರವರೊಂದಿಗೆ ದೈಹಿಕ ಸಂಪರ್ಕವನ್ನು ಹೊಂದಿರುವುದಿಲ್ಲ ಈ ವಿಚಾರವನ್ನು ಸಾಕ್ಷಿ-1 ರವರು, ಸಾಕ್ಷಿ-4 ರವರಿಗೆ ತಿಳಿಸಿದ್ದರಿಂದ ಸಾಕ್ಷಿ-4 ರವರು ಈ ವಿಚಾರವನ್ನು ಎ1 ಆರೋಪಿಯನ್ನು ಕೇಳಿದ್ದಕ್ಕೆ ಎ1 ಆರೋಪಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಯೋನಿಯನ್ನು ಹಿಗ್ಗಿಸಿಕೊಳ್ಳಲು ಹೇಳಿ ಎಂದು ಸಾಕ್ಷಿ-4 ರವರ ಹತ್ತಿರ ಹೇಳಿರುತ್ತಾರೆ. ಎ1 ಆರೋಪಿಗೆ ಲೈಂಗಿಕ ರೋಗವಿದ್ದು ಇದನ್ನು ಮರೆಮಾಚಿ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಮದುವೆಯಾಗಿರುತ್ತಾರೆ. ಮದುವೆಯಾದ 40 ದಿನಕ್ಕೆ ಎ1 ಆರೋಪಿ ವಾಪಸ್ಸು ಯುಎಸ್‌ಎ ಗೆ ಹೋಗಿದ್ದು ಸಾಕ್ಷಿ-1 ರವರು ಸುಮಾರು 8 ತಿಂಗಳು ಎ1 ಆರೋಪಿಯ ತಂದೆಯ ಜೊತೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದು ನಂತರದಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರು ಯುಎಸ್‌ಎ ಗೆ ಹೋಗಲು ವಿಸಾ ತಯಾರಿಸಿಕೊಂಡು, ಸಾಕ್ಷಿ-1 ರವರು ಯುಎಸ್‌ಎ ಗೆ ಹೋಗಲು ಎ1 ಆರೋಪಿಗೆ ಟಿಕೆಟ್ ಬುಕ್ ಮಾಡುವಂತೆ ಹೇಳಿದ್ದು ಅದಕ್ಕೆ ಎ1 ಆರೋಪಿ ಸಾಕ್ಷಿ-1 ರವರ ಹತ್ತಿರ ಇರುವ ಸೇವಿಂಗ್ಸ್ ಹಣವನ್ನು ಟ್ರಾನ್ಸ್‌ಫರ್ ಮಾಡಿದರೇ ಕರೆದುಕೊಂಡು ಹೋಗುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾನೆ, ನಂತರ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಅಪಘಾತವಾಗಿದ್ದು ಈ ವಿಷಯವನ್ನು ಎ1 ಆರೋಪಿಗೆ ತಿಳಿಸಿದರೂ ಸಹ ಎ1 ಆರೋಪಿ ಭಾರತಕ್ಕೆ ಬಂದಿರುವುದಿಲ್ಲ ಹಾಗೂ ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಯುಎಸ್‌ಎ ಕರೆದುಕೊಂಡು ಹೋಗಿರುವುದಿಲ್ಲ ಹಾಗೂ ಎ1 ಆರೋಪಿ ಸಾಕ್ಷಿ-1 ರವರ ನಂಬರನ್ನು ಬ್ಲಾಕ್ ಮಾಡಿರುತ್ತಾರೆ, ಈ ರೀತಿಯಾಗಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಎ1 ಆರೋಪಿ ಕಿರುಕುಳ ನೀಡಿರುವುದು ತನಿಖಾ ಕಾಲದಲ್ಲಿ ಲಭ್ಯವಾದ ಸಾಕ್ಷಿ ಮತ್ತು ಸಾಕ್ಷ್ಯಾಧಾರಗಳಿಂದ ದೃಢಪಟ್ಟಿರುವುದರಿಂದ ಎ1 ಆರೋಪಿಯ ವಿರುದ್ಧ ಕಲಂ:498(ಎ) ಐಪಿಸಿ ಹಾಗೂ 4 ಡಿ ಪಿ ಆಕ್ಟ್ ರೀತ್ಯಾ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೆ.”

A perusal at the summary of the charge sheet would also not indicate any demand of dowry or cruelty on the part of the husband. Prior to filing of the charge sheet by the Police,

statements were recorded of the family members of the complainant. The statement of her mother assumes certain significance, relevant portion of which reads as follows:

“.....

ನನ್ನ ಮಗಳ ಮದುವೆ ಮಾಡಬೇಕೆಂದು ಬ್ರಾಹ್ಮಿಣ ಮ್ಯಾಟ್ರಿಮೋನಿಯಾದಲ್ಲಿ ನನ್ನ ಮಗಳ ಹೆಸರನ್ನು ನೋಂದಾಯಿಸಿರುತ್ತೇವೆ, ನನ್ನ ಮಗಳ ಪ್ರೊಪೈಲ್ ಅನ್ನು ಹುಡುಗ ಎಕ್ಸೆಪ್ಟ್ ಮಾಡಿರುತ್ತಾನೆ ಹಾಗೂ ಹುಡುಗನ ತಂದೆ ನನಗೆ ಪೋಸ ಮಾಡಿದ್ದು ನನ್ನ ಮಗಳು ನನ್ನ ಪೋಸ ನಂಬರ ಕೊಟ್ಟಿದ್ದು ಹುಡುಗನ ತಂದೆ ನನಗೆ ಪೋಸ ಮಾಡಿ ನಿಮ್ಮ ಹುಡುಗೀ ನಮಗೆ ಒಪ್ಪಿಗೆಯಾಗಿದ್ದಳೇ ಮದುವೆ ಮಾತುಕತೆ ಮಾಡಲು ನಿಮ್ಮ ಮನೆಗೆ ಬರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ, ನಂತರ ಹುಡುಗ ಮತ್ತು ಅವರ ಸಂಬಂಧಿಕರು ಮದುವೆ ಮಾತುಕತೆ ಮಾಡಿದ್ದು ಮಾತುಕತೆಯಲ್ಲಿ ಹುಡುಗ ಮತ್ತು ಅವರ ಸಂಬಂಧಿಕರು ನಮಗೆ ಯಾವುದೇ ವರದಕ್ಷಿಣೆ ಬೇಡವೆಂದು ಹೇಳಿರುತ್ತಾರೆ ಹಾಗೂ ಯಾವುದೇ ಡಿಮ್ಯಾಂಡ ಮಾಡಿರುವುದಿಲ್ಲ. ನಂತರ ದಿನಾಂಕ:29/05/2020 ಈಶ್ವರ ಮಂಗಲ್ ಗ್ರಾಮ ಪುತ್ತೂರು ಇಲ್ಲಿ ಗುರು ಹಿರಿಯರ ಸಮ್ಮುಖದಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ನನ್ನ ಮಗಳು XXXXಳನ್ನು ಹುಡುಗ XXXX ರವರಿಗೆ ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಿಕೊಟ್ಟಿರುತ್ತೇನೆ, ಮದುವೆಯಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ನನ್ನ ಅಳಿಯನಿಗೆ 614 ಗ್ರಾಂ ಬೆಳ್ಳಿ ಸಾಮಾನುಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಹಾಗೂ ನನ್ನ ಮಗಳಿಗೆ 160 ಗ್ರಾಂ ಚಿನ್ನದ ಒಡವೆಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ.

.....ನನ್ನ ಅಳಿಯ ಪ್ರತಿದಿನ ಯಾವುದಾದರೊಂದು ಕಾರಣ ಹೇಳಿಕೊಂಡು ನನ್ನ ಮಗಳ ಜೊತೆಗೆ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡದ ಕಾರಣ ನನ್ನ ಮಗಳು ನನಗೆ ಪೋಸ ಮಾಡಿ ವಿಚಾರವನ್ನು ತಿಳಿಸಿದ್ದರಿಂದ ಈ ವಿಚಾರವಾಗಿ ನಾನು ನನ್ನ ಅಳಿಯನನ್ನು ಕೇಳಿದ್ದಕ್ಕೆ ನನ್ನ ಅಳಿಯ ನಿಮ್ಮ ಮಗಳ ಯೋನಿ ಚಿಕ್ಕದಿದೆ ಪಿಂಗರಿಂಗ್ ಮಾಡಿಕೊಂಡು ಹಿಗ್ಗಿಸಲು ಹೇಳಿ ಎಂದು ಹೇಳಿರುತ್ತಾನೆ, ನನ್ನ ಮಗಳಿಗೂ ಸಹ ಇದೇ ರೀತಿ ಹೇಳಿರುತ್ತಾನೆ ಹಾಗೂ ನನ್ನ ಅಳಿಯನಿಗೆ ಯಾವುದೋ ಲೈಂಗಿಕ ರೋಗವಿದ್ದು ಇದನ್ನು ಮರೆಮಾಚಿ ನನ್ನ ಅಳಿಯ ನನ್ನ ಮಗಳನ್ನು ಮದುವೆ ಮಾಡಿಕೊಂಡಿರುತ್ತಾನೆ, ಮದುವೆಯಾದ 40 ದಿನಕ್ಕೆ ನನ್ನ ಅಳಿಯ ವಾಪಸ್ಸು ಅಮೇರಿಕಾಗೆ ಹೋಗಿದ್ದು ನನ್ನ ಮಗಳಿಗೆ ವೀಸಾ ಮಾಡಿಸಿ ಕರೆದುಕೊಂಡು ಹೋಗುವುದಾಗಿ ಹೇಳಿರುತ್ತಾನೆ ಹಾಗೂ ನನ್ನ ಮಗಳಿಗೆ ಅವರ ತಂದೆಯ ಜೊತೆಗೆ ವಾಸವಾಗಿರುವಂತೆ ಹೇಳಿ ಹೋಗಿರುತ್ತಾನೆ. ನನ್ನ ಮಗಳು ಸುಮಾರು 8 ತಿಂಗಳು ಅವರ ಮಾವನ ಜೊತೆಗೆ ವಾಸವಾಗಿದ್ದು ನನ್ನ ಮಗಳ ಅತ್ತೆ ಇಲ್ಲದ ಕಾರಣ ನನ್ನ ಮಗಳು ಮಾವನ ಜೊತೆಗೆ ವಾಸವಾಗಿರುವುದು ಬೇಡವೆಂದ ತನ್ನ ಗಂಡನಿಗೆ ತಿಳಿಸಿ ಬೇರೆ ಮನೆಯನ್ನು ಮಾಡಿಕೊಂಡು ವಾಸವಾಗಿರುತ್ತಾಳೆ ಆದರೆ ನನ್ನ ಅಳಿಯ ನನ್ನ ಮಗಳಿಗೆ ಅವರ ತಂದೆಯ ಜೊತೆಗೆ ವಾಸವಾಗಿರುವಂತೆ ಒತ್ತಾಯ ಮಾಡಿರುತ್ತಾನೆ, ನಂತರ ನನ್ನ ಮಗಳು ಅಮೇರಿಕಾಗೆ ಹೋಗಲು ವೀಸಾ ಅಪ್ಲೈಯ ಮಾಡಿ ವೀಸಾ ಮಾಡಿಸಿಕೊಂಡಿರುತ್ತಾಳೆ, ವೀಸಾ ಮಾಡಿಸಿಕೊಂಡ ನಂತರ ನನ್ನ ಮಗಳು ಅಳಿಯನಿಗೆ ಪೋಸ ಮಾಡಿ ಫ್ಲೈಟ್ ಟಿಕೆಟ್ ಬುಕ್ ಮಾಡಿ ಅಮೇರಿಕಾಗೆ ಬರುವುದಾಗಿ ತಿಳಿಸಿದ್ದು ಆದರೆ ನನ್ನ ಅಳಿಯ ನನ್ನ ಮಗಳನ್ನು ಅಮೇರಿಕಾಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಬೇಕಾದರೇ ನನ್ನ ಮಗಳ ಸೇವಿಂಗ್ಸ್ ಹಣವನ್ನು ನನ್ನ ಅಳಿಯನ ಖಾತೆಗೆ ವರ್ಗಾವಣೆ ಮಾಡುವಂತೆ ಒತ್ತಾಯ ಮಾಡಿರುತ್ತಾನೆ ನಂತರ ನನ್ನ ಮಗಳಿಗೆ ಅಪಘಾತವಾಗಿದ್ದು ಈ ವಿಚಾರವನ್ನು ನನ್ನ ಮಗಳು ನನ್ನ ಅಳಿಯನಿಗೆ ತಿಳಿಸಿದರು ಸಹ ನನ್ನ ಅಳಿಯ ಬೆಂಗಳೂರಿಗೆ ಬಂದಿರುವುದಿಲ್ಲ ಹಾಗೂ ನನ್ನ ಅಳಿಯನಿಗೆ ಲೈಂಗಿಕ ಸಮಸ್ಯೆ ಇರುವುದರಿಂದ ಬೆಂಗಳೂರಿಗೆ ಬನ್ನಿ ಚಿಕಿತ್ಸೆ ತೆಗೆದುಕೊಂಡು ಹೋಗೋಣ ಎಂದು ವಾಪಸ್ಸು ಇಬ್ಬರು ಅಮೇರಿಕಾಗೆ ಹೋಗೋಣ ಎಂದು ಹೇಳಿದರೂ ಸಹ ನನ್ನ ಅಳಿಯ ಬೆಂಗಳೂರಿಗೂ ಬಂದಿರುವುದಿಲ್ಲ ನನ್ನ ಮಗಳನ್ನು ಅಮೇರಿಕಾಗೂ ಕರೆಸಿಕೊಳ್ಳದ ಕಾರಣ ನನ್ನ ಮಗಳು ನನ್ನ ಅಳಿಯನಿಗೆ ನೀವು ನನ್ನನ್ನು ಅಮೇರಿಕಾಗೆ ಕರೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ನಾನು ಲೀಗಲ್ ಮುಂದುವರೆಯುತ್ತೇನೆ ಎಂದು ಮೇಲ್ ಮಾಡಿದ್ದು ನನ್ನ ಅಳಿಯ ವಾಪಸ್ಸು ರಿಪ್ಲೈ

ಮಾಡದ ಕಾರಣ ನನ್ನ ಮಗಳು ತಮ್ಮ ತಾಣೆಯಲ್ಲಿ ತನ್ನ ಗಂಡನ ವಿರುದ್ಧ ದೂರು ನೀಡಿರುತ್ತಾಳೆ, ನಂತರ ನನ್ನ ಅಳಿಯ ನನ್ನ ಮಗಳಿಗೆ ಡಿವೋರ್ಸ್ ನೋಟೀಸ್ ಕಳುಹಿಸಿರುತ್ತಾನೆ.

ಈ ರೀತಿಯಾಗಿ ನನ್ನ ಮಗಳಿಗೆ ಅವಳ ಗಂಡ ಕಿರುಕುಳವನ್ನು ನೀಡಿರುತ್ತಾರೆ.”

(Emphasis added)

The mother herself in her statement speaks that at the time of discussions about the marriage, the parents of the petitioner and the petitioner had clearly indicated that they do not want any dowry and they are not demanding anything. The same goes with the statements of others. The statement of one Karthik Rao, brother of the complainant is as follows:

“ನಾನು ಮೇಲೆ ತಿಳಿಸಿದ ವಿಳಾಸದಲ್ಲಿ ಸಂಸಾರ ಸಮೇತವಾಗಿ ವಾಸವಾಗಿದ್ದು, ಕ್ಯಾಟರಿಂಗ್ ಬಿಸಿನೆಸ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ, ನಮ್ಮ ತಂದೆ ತಾಯಿಗೆ ನಾವು ಇಬ್ಬರು ಮಕ್ಕಳಿದ್ದು ತಮ್ಮ ತಾಣೆಯಲ್ಲಿ ದೂರು ನೀಡಿರುವ ಶ್ರೀಮತಿ XXXX ರವರು ನನ್ನ ಸ್ವಂತ ಅಕ್ಕ.

ನನ್ನ ಅಕ್ಕನ ವಿದ್ಯಾಭ್ಯಾಸ ಮುಗಿದ ಮೇಲೆ ಬೆಂಗಳೂರಿನಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುವಾಗ ನನ್ನ ಅಕ್ಕನಿಗೆ ಮದುವೆ ಮಾಡಬೇಕೆಂದು ಬ್ರಾಹ್ಮಣ ಮೈಟ್ರಿಮೋನಿಯಾದಲ್ಲಿ ನನ್ನ ಅಕ್ಕನ ಹೆಸರನ್ನು ನೋಂದಾಯಿಸಿರುತ್ತೇವೆ, ನಂತರದಲ್ಲಿ ನನ್ನ ಅಕ್ಕನ ಪೊಪ್ಪೆಲ್ ಅನ್ನು ಹುಡುಗ ಎಕ್ಸೆಪ್ಟ್ ಮಾಡಿರುತ್ತಾನೆ ಹಾಗೂ ಹುಡುಗನ ತಂದೆ ನನ್ನ ಅಕ್ಕನಿಗೆ ಪೋನ ಮಾಡಿದ್ದು ನನ್ನ ಅಕ್ಕ ನನ್ನ ತಾಯಿನ ಪೋನ ನಂಬರ ಕೊಟ್ಟಿದ್ದು ಹುಡುಗನ ತಂದೆ ನನ್ನ ತಾಯಿಗೆ ಪೋನ ಮಾಡಿ ನಿಮ್ಮ ಹುಡುಗೀ ನಮಗೆ ಒಪ್ಪಿಗೆಯಾಗಿದ್ದಾಳೆ, ಮದುವೆ ಮಾತುಕತೆ ಮಾಡಲು ನಿಮ್ಮ ಮನೆಗೆ ಬರುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ, ನಂತರ ಹುಡುಗ ಮತ್ತು ಅವರ ಸಂಬಂಧಿಕರು ನಮ್ಮ ಮನೆಗೆ ಮದುವೆ ಮಾತುಕತೆಗೆ ಬಂದಿದ್ದು ನಮ್ಮ ಸಂಬಂಧಿಕರು ಮತ್ತು ಹುಡುಗನ ಸಂಬಂಧಿಕರು ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಮದುವೆ ಮಾತುಕತೆ ಮಾಡಿದ್ದು ಮಾತುಕತೆಯಲ್ಲಿ ಹುಡುಗ ಮತ್ತು ಅವರ ಸಂಬಂಧಿಕರು ನಮಗೆ ಯಾವುದೇ ವರದಕ್ಷಿಣೆ ಬೇಡವೆಂದು ಹೇಳಿರುತ್ತಾರೆ ಹಾಗೂ ಯಾವುದೇ ಡಿಮ್ಯಾಂಡ ಮಾಡಿರುವುದಿಲ್ಲ. ದಿನಾಂಕ:29/05/2020 ಈಶ್ವರ ಮಂಗಲ್ ಗ್ರಾಮ ಪುತ್ತೂರು ಇಲ್ಲಿ ಗುರು ಹಿರಿಯರ ಸಮ್ಮುಖದಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ಕೋವಿಡ ಇದ್ದುದರಿಂದ ಸರಳವಾಗಿ ನನ್ನ ಅಕ್ಕ XXXXಳನ್ನು ಹುಡುಗ XXXX ರವರಿಗೆ ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಿಕೊಟ್ಟಿರುತ್ತೇನೆ, ಮದುವೆಯಲ್ಲಿ ಸಂಪ್ರದಾಯದಂತೆ ನನ್ನ ಭಾವನಿಗೆ 614 ಗ್ರಾಂ ಬೆಳ್ಳಿ ಸಾಮಾನುಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಹಾಗೂ ನನ್ನ ಮಗಳಿಗೆ 160 ಗ್ರಾಂ ಚಿನ್ನದ ಒಡವೆಗಳನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ.”

(Emphasis added)

What is given to the complainant, according to the complainant's tradition, is 614 grams of silver and 160 grams of gold, not as demand but as a tradition of her family which at best be said to be 'Stridhana'. Such statements galore. If the statements recorded of the mother and the brother of the complainant, the complaint, the charge sheet and summary of the charge sheet are read in tandem, what would unmistakably emerge is that, no demand for dowry was made and no cruelty that would become ingredients of Section 498A of the IPC would get attracted in the case at hand. 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 willful 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 has two circumstances, which can draw an accused into its web. Husband or relative of husband of a woman subjecting her to cruelty which is likely to drive the woman to suicide or the harassment should be such that they would coerce the woman for meeting any unlawful demand for any property or valuable security, and on failure to fulfill the demand, indulge in cruelty. If the contents of the complaint, summary of the charge and the statements are considered on the bedrock of necessary ingredients of Section 498A of the IPC, the allegation of the offence would tumble down like a pack of cards, as, no where it is indicative, of the fact that there is dowry harassment and cruelty by the husband or the members of the family of the petitioner. This Court, entertaining the petition grants an interim order of stay on 01-09-2023. The same is subsisting even today. The complainant has filed application seeking vacation of the interim order. It is germane to notice the affidavit filed by the respondent/complainant for the said purpose. It reads as follows:

"1. "I state that I am the Respondent No. 2 in the above case. I am, conversant with the facts and circumstances of the above case.

2. *I state that I am the wife of Petitioner No.1 and Petitioner No.1 from the 40th day of the marriage have been living in USA and never bothered to take me with him. He has abandoned & cheated me immediately after the marriage.*
3. ***I state that the Petitioner No.1 was never interested to engage in sexual intercourse from the very inception of the marriage. So, the marriage is not consummated. I suspect that the Petitioner No.1 is suffering from HPV infection (Sexually transmitted disease) and I have seen some rashes in his buttock. When I questioned the Petitioner No.1 as to what the infection was, the Petitioner No.1 got offended and avoided me and decided to leave for America and blamed and abused me for the unfortunate situation thereby putting me under immense stress and pain.***
4. ***I state that the Petitioner No.1 is working in USA on H1B visa while I got my H4-Dependent visa. On several occasions, I had requested the Petitioner No.1 to make the travel arrangements, so that I can join him in USA. But the Petitioner No.1 was not reachable and blocked me in all communication channels. So, as a last resort to reach him I had sent emails to the Petitioner No.1. In the said email I had clearly mentioned what I have been going through and asked him to respond and also inform me about the travel plans, but I never got any response to any of my emails from the Petitioner No.1. The said conduct of the Petitioner No.1 after making, my tie knot and now is purposely avoiding me for no reasons and have clearly done so only with the purpose of harassing me and has left the companionship without any means. The copy of the emails sent to the Petitioner No.1 on 05/12/2021 is produced herewith as **Document No.1**.***
5. *I state that the I am unable to bear the torture & abuse inflicted upon me by the Petitioner No.1. He asked me to transfer all my savings to his bank account through his father while I stayed in his*

*father's house in hosakerehalli, so after that he can take me to USA and tried to abuse me financially. Petitioner No.1 had already taken the Stridhan from me against my will and made me to leave my job and thereby economically abusing me and putting under extensive financial pressure as well. **I was subject to constant harassment and abuse by my father-in-law and eventually made to leave my matrimonial home by the Petitioner No.1 in collusion with his father. I have lodged a police complaint against Petitioner No.1 under section 498 IPC on 25/01/2022.***

- 6. I state that to the shock and dismay of me, I received a summons from the court to appear on 30.03.2022 with respect to a DIVORCE petition filed by the Petitioner No.1 through GPA and got a call from police on 26/03/2022, false police complaint was lodged against me. As I mentioned in the Email (Document No.1), the Petitioner No.1 was expecting me to take legal recourse against him and in order to take the upper hand in legal proceedings and harass me, the Petitioner No.1 got filed a false complaint against me and FIR has not been registered against me as the complainant did not have any substance. The RTI copy of the NCR and My statement is enclosed as Document No. 2.**
- 7. I state that the Petitioner No.1 has absolutely no love warmth or affection for me, and never bothered to care for me. I met with a bike accident in the month of Aug 2021 and was severely injured and was admitted to hospital. I was injured badly and also had some face abrasions and when I communicated this to the Petitioner No.1, he completely neglected, switched off his mobile on weekends, and denied to help financially. He did not lend any moral or financial support as a responsible husband would ordinarily do. His behavior has been very depressing to me, and it has affected my career and health. The copy of the pictures of the injuries incurred on me and hospital bills are enclosed **Document No.3.***

8. *I state that the I had suffered restlessly in the hands of the Petitioner No.1, My marriage is completely ruined although I made efforts to save the marriage, and this has put me to great suffering, pain, tension and loss. I had undergone cruelty, harassment and torture during my matrimonial life with the Petitioner No.1 and it has affected me both mentally and physically.*

9. *I submit that if the above application is not allowed, I will be put to great hardship, loss and inconvenience, on the other hand no hardship and injury would be caused to the Petitioner No.1."*

(Emphasis added)

The application seeking vacation of the interim order appends a mail to the husband. The mail dated 05-12-2021 reads as follows:

"Sun, Dec 5. 2021 at 5:59 PM

Hi xxx,,

I have been trying to contact you on whatsapp but it seems the internet is disconnected, messages undelivered. Let me know the issue. So contacting you here.

As communicated, in the what's app my relatives are coming to India on Dec 2nd week-2021 and planning to leave on Jan 1st 2022.

Let me know if you want me to come with them. If not, communicate what your plans are.

I have been waiting to contact you from so long. But there is no response.

I am still contacting you after going through many abuse from your family.

-you had forcefully made me vacate my rented house where I was staying before marriage while

working, and made me stay in your father's house. After shifting there, you again told me to move to Whitefield, telling your dad is not comfortable and no peace. If this is the case, you could have told me before vacating my rented house.

-You and your dad had taken the gold which you gave as a gift at the time of marriage-Streedhan. That time you have also asked me for my gold. I refused to give mine. After multiple discussions you told me to give the gold which you gifted me. I have agreed to that and it is with you.

- You are not interested in sex and avoiding that from the day of marriage. You have some infections on your butt and back. You started avoiding me after asking what it is. Marriage is still not consummated.

You are telling me it's all my fault, and it's my drama, which makes you upset everyday. I have recorded the conversation before you fly back to the US, which covers everything. I had gone through emotional abuse in the first month of marriage itself.

-Your dad was giving me verbal abuse and had misbehaved with me. And this happened in front of you but you still told me to stay there. I was not OK to move to your father's house where there is no mother in law. It's naturally not easy for any girl.

-he was commenting on my stuff, telling me how to behave. I was not comfortable coming out of the room. Most of the time, I was inside my room. For that also he scolded me for not talking to him.

-So I thought let me take a rented house. So I did in the month of Jan 2021, I have told you, there is a minimum 6 months I have to stay there which means Jan - June 2021

initial 5 months you denied to help me financially. Then later on asking multiple times you have agreed to pay 20k as monthly expense till December-2021.

-My visa was getting cancelled everytime. But in the month of Aug-21 limited slots are getting opened. I met with a bike

accident in Aug-2021, it was not possible to book slots at that time. I was able to get the slots for Sep-2021 and got a visa on Oct-2021.

Since it's the first time for me to travel to the US, my family wants me to come with my relatives, This I have communicated with you on whatsapp and it has been delivered to you. After that there is no response from you on any communication channel and there is an internet issue.

If you want to communicate anything, please do that here. I have to consider you are not interested in me coming there if you are not responding.

If so, I will cancel all my plans to come to the US since I have approached elders and they are not taking any responsibilities-including your father.

From next year it will be a fresh start, I can wait till December-2021, still if I am not getting any response from you, I will take the legal proceedings in India.

Regards,

*xxxx
Mob-9900110806"*

(Emphasis added)

The mail appears to be the foundation for registering the impugned complaint. The husband after receipt of the mail files a petition for divorce in M.C.No.6838 of 2021 on 23-12-2021. Notice is issued by the concerned Court and said the notice is received by the complainant. It is then the aforesaid complaint emerges for the aforesaid offences. It becomes germane to notice the grievance of the 2nd respondent with regard to the problem of the husband.

8. The learned counsel for the petitioner submits that every time the petitioner was accused of suffering from STD. In the aforesaid affidavit, it is clearly indicated by the wife that the petitioner is suffering from HPV infection as he has some rashes on his buttock. The petitioner gets himself tested at the Victoria Hospital and several hospitals. The Hepatitis B test is undergone and the report reads as follows:

"SEROLOGY & IMMUNOLOGY

HEPATITIS B SURFACE ANTIGEN (HBSAG)

Sample Collected On: 11-APR-23 12.05.21 PM

Certified On: 11-APR-23 01.23.54 PM

Result: *The given sample is Negative*

Method: *RAPID CARD TEST (IMMUNOCHROMATOGRAPHIC ASSAY) HBsAg"*

HIV test is also done on 30-04-2023 which shows it to be non-reactive. The report is as follows:

"Integrated Counselling & Testing Centre (ICTC)

No. 7655

HIV TEST REPORT FORM

Name: Surname-----Middle Name B. First Name xxx

GOSAICTCKABLU01521

Gender: M 33 Years PID # 03260 Lab ID # 03260

Date and Time blood drawn 11/4/23 (DD/MM/YY) 12.50 P.M(HH:MM)

Test Details:

Specimen type used for testing: Serum / ~~Plasm~~ / ~~Whole Blood~~
 Date and Time specimen tested 11/4/23 (DD/MM/YY) 2PM(HH:MM)

Note:

- Column 2 and 3 to be filled by only when HIV 1 & 2 antibody discriminatory test(s) used
- No cells have to be left blank, indicate as NA where not applicable.

Column 1	Column 2	Column 3	Column 4
Name of HIV Test Kit	Reactive/Non Reactive (R/NR) for HIV-1 Antibodies	Reactive/Non Reactive (R/NR) for HIV-2 Antibodies	Reactive/Non Reactive (R/NR) for HIV Antibodies
Test I combaids	/		NON REACTIVE
Test II			
Test III"			

VDRL test also was done, the report of which is as follows:

"Name	:MR.xxx	Bill/IP No.	:BMJHG/23-24/OPB276
Age & Gender	: 33 Years, Male	Consultant Name	:Dr. ER DOCTOR
UHID No	:BMJHG000037462	Report Date Time	:11/04/2023 8:04 pm

Class	OPD	Sample Collection Date Time	:11/04/2023 7:28 pm
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Test Name	Patient Value	Reference Value	Unit
VDRL NEGATIVE"	MICROBIOLOGY		

Since the wife went on complaining that the petitioner has HPV, he gets it tested in the USA. The report of HPV is as follows:

*"CUMMINS LIVE WELL CENTER
CUMMINS LIVEWELL CENTER
806 JACKSON STREET
COLUMBUS IN 47201-6264
812-748-3412*

October 9, 2023

*Xxxxx
3781 Sitka Circle
Apt #1135
Columbus IN 47201*

Concerning Mr. Bhat:

xxx was seen in office.

***History and Physical Exam was done.
xxx has no physical signs. And no history of concern. for
HPV or any other infection on body.***

There is no test available for testing HPV in males. Diagnosis is almost exclusively done by physical findings (when there are findings.) There are none in this case.

Quote from N.C.B.I (National Institute for Biomedical Technology). >"No HPV test for men has been approved by the

FDA, nor has any test been approved for detection of the virus in areas other than the cervix."

If you have any questions or concerns, please don't hesitate to call."

(Emphasis added)

The diagnostic centre at Columbus, USA observes that history and physical examination of the petitioner was done. He has no physical signs and no history of concern for HPV or any other infection in the body. Therefore, the bogey that is projected by the complainant/wife that the husband has some physical problem appears to be a white lie.

9. The other bogey projected by the wife is that the petitioner has closed all channels of communications and had never shown any interest in getting the complainant to the USA, this is completely belied by the documents appended to the petition itself, as not one but four appointments were taken by the petitioner for VISA purposes of the wife. The first appointment after the petitioner left to the USA was on 13-10-2020. There are four appointments, confirmation acknowledgments of which are produced by the petitioner as annexures to the petition. They are dated 13-10-2020,

02-03-2021, 07-05-2021 and 24-05-2021; the latest of which reads as follows:

"APPOINTMENT CONFIRMATION

APPLICANT DETAILS

<i>Applicant Name:</i> xxxx	<i>Visa Class:</i> H - 4
<i>Passport Number:</i> P5705962	<i>Visa Category:</i> H & L visas
<i>Appointment Made By:</i> xxxx	<i>Visa Priority:</i> English
<i>Number of Applicants:</i> 1	

VAC APPOINTMENT DETAILS

<i>Date:</i> Tuesday March 2, 2021	<i>CHENNAI VAC</i>
<i>Time:</i> 09.30 (1413)	<i>No.82, Kodambakkam High Road,, Nungambakkam,, Chennai, 600034</i>

CONSULAR APPOINTMENT DETAILS

<i>Date:</i> Monday March 15, 2021	<i>HYDERABAD</i>
<i>Time:</i> 10:45 (770)	<i>1-8-323, Chiran Fort Lane Begumpet, Secunderabad Andhra Pradesh, 500003</i>

DOCUMENT DELIERY INFORMATION

<i>Document Delivery Type:</i> Pick Up	<i>Bengaluru Prestige Atrium 2nd floor Unit No."</i>
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It is on the 5th appointment, the complainant goes before the visa office and Visa is granted to the complainant, which is also appended as document to the petition. These are documents which speak for themselves. A mail communication on 05-12-2021 is quoted hereinabove. The complainant seeks confirmation regarding her travel to USA. Therefore, it is clearly a bogey projected by the complainant that the petitioner was not interested in getting her to the USA and had blocked all channels; but the documents speak otherwise. The attitude of the complainant also speaks for itself. Therefore, it is not a case where there is an iota of ingredient against the petitioner/husband for the offences punishable under Section 498A of the IPC or Sections 3 and 4 of the Act. It is misuse and abuse of criminal justice system by the complainant right from the word go. It is in such circumstances the Apex Court in the case of **ACHIN GUPTA v. STATE OF HARYANA**¹, has held as follows:

"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?*

¹ 2024 SCC OnLine SC 759

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*, 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 Apex Court considers the entire spectrum of law and holds that the act of the complainant was in gross misuse and abuse of the process of law. The Apex Court further holds that it is the duty of the High Court to look into the FIR with care and little more closely and ascertain whether necessary ingredients to constitute the offence is disclosed or not, as many a time frivolous and vexatious proceedings are permitted to continue. The Court exercising jurisdiction under Section 482 of the Cr.P.C., has a duty to look into not only the complaint but all other attendant circumstances emerging from the record and if need be due care and circumspection be done, to read between the lines. This is exactly what this Court has undertaken in the case at hand.

10. This Court has completely considered the complaint, summary of the charge sheet, the statements recorded and the law as laid down by the Apex Court in the aforesaid judgment. All this exercise is undertaken only to arrive at a conclusion as to any of the ingredients of the offences are met or otherwise. The unmistakable conclusion is that, the complainant in gross misuse and abuse of law has set the criminal law into motion. Such

frivolous cases registered by the wife have taken enormous judicial time, be it before the concerned Court or before this Court, and has led to enormous civil unrest, destruction of harmony and happiness in the society. It may not be that these would be the facts in every given case. The Court is only concerned about frivolous and vexatious litigations clogging the criminal justice delivery system, where genuine cases lie in cold storage. If the facts narrated hereinabove are noticed and as observed, the complainant has, in gross misuse and abuse of the process of the law, has set the criminal law into motion. Therefore, it becomes a fit case where the husband must be given liberty to initiate proceedings for malicious prosecution or initiate proceedings under Section 211 of the IPC. Liberty is thus reserved to the husband, for such action to be initiated in accordance with law, if he so desires.

11. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Proceedings in C.C. No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate,

Bangalore arising out of Crime No.35 of 2022 stand quashed *qua* the petitioner.

- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

Bkp
CT: MJ