12/07/2018

Shri Rajesh Shukla, Counsel for the applicants.

Shri Devendra Chaubey, Public Prosecutor for respondent No. 1/State.

Shri O.P. Singhal, Counsel for respondent No. 2/complainant.

This order shall dispose of MCRC Nos. 13479/2018 filed by Shri Ashutosh Mishra and Ors. and MCRC No. 4599/2018 filed by Smt. Jyoti Daipuriya.

These applications under Section 482 of CrPC have been filed against the order dated 30/12/2017 passed by the JMFC, Bhind in RCT No. 1803/2017 by which the trial Court has taken cognizance of offence under Sections 498-A and 323/34 of IPC and Section 3/4 of Dowry Prohibition Act.

The necessary facts for the disposal of the present applications in short are that on 12/12/2017, the respondent No. 2 lodged a report at Police Station Dehat, District Bhind alleging therein that her marriage was solemnized with applicant No. 1 Ashutosh Mishra on 26/4/2016 as per Hindu Rites and Rituals and her father had given sufficient dowry including one four-wheeler and an amount of Rupees Five Lakhs in cash with gold and silver ornaments and other domestic articles. After 3-4 days of her marriage, the applicants started demanding an additional amount of Rupees Ten Lakhs and when respondent No. 2 replied to her in-laws that

her father has already given sufficient dowry to them and now he cannot fulfill their further demand, then the applicants started harassing and beating respondent No.2 and scolded that unless and until respondent No. 2 brings an additional amount of Rupees Ten Lakhs, she cannot live in her matrimonial house and she was forced to leave her matrimonial house. It was further alleged that respondent No. 2 is presently residing in her parental home.

The police, after recording the statements of the witnesses, filed the charge-sheet for above-mentioned offences. The trial Court by order dated 30/12/2017 took cognizance of the offence under Sections 498-A, 323/34 of IPC and Section 3/4 of the Dowry Prohibition Act.

It is submitted by the counsel for the applicants that respondent No. 2 had stayed in her matrimonial house only for 3 to 4 days and, thereafter, she left her matrimonial house and on her own free will, she is staying in her parental home. It is further alleged that in fact respondent No. 2 was in love with somebody else and, therefore, she did not allow applicant No. 1 even to touch her on the first night of the marriage and she also told applicant No. 1 that she has been married contrary to her wishes. It is submitted that when respondent No. 2 did not come back to her matrimonial house inspite of every efforts made by the applicants, then applicant No. 1 filed an application under Section 9 of Hindu Marriage

Act. However, when he realized that respondent No. 2 has already decided not to stay with the applicants, therefore, applicant No. 1 withdrew his application under Section 9 of Hindu Marriage Act and filed another application under Section 13 of Hindu Marriage Act for grant of divorce on the ground of desertion. It is submitted that by way of counter-blast to the petition under Section 13 of Hindu Marriage Act, this false complaint has been lodged. It is further submitted that as the applicants were being threatened by respondent No. 2, therefore, applications were given by the applicants to the police authorities expressing their apprehension of false implication. It is submitted that inspite of the applications given by the applicants, which were prior in time, the police registered the FIR against the applicants and without conducting any enquiry, filed the charge-sheet and the trial Court has taken cognizance of the matter. It is further submitted that there is a growing tendency in the society to falsely implicate the near and dear relatives of the husband of the complainant. It is well established principle of law that in order to prosecute the near and dear relatives of the husband of the complainant, there has to be specific allegation against them but in the present case, except making wild, vague and omnibus allegations against the applicants of demand of Rupees Ten Lakhs and harassment, no substantive allegations have been made. It is submitted that in MCRC No. 13479/2018, applicant

No. 1 is the husband, applicant No. 2 is the father-in-law and applicant No. 3 is the mother-in-law whereas in MCRC No. 4599/2018, the applicant is the sister-in-law of the complainant. It is submitted that Smt. Jyoti Daipuriya (applicant in MCRC No. 4599/2018) was already married about 10 years back and unfortunately, she was required to undergo amputation of one of her legs because of gangrene. She is a handicapped lady and has no concern with the family affairs of the complainant and applicant No. 1.

Per contra, the applications are vehemently opposed by the State counsel as well as by the counsel for respondent No. 2.

It is submitted by the counsel for respondent No. 2 that the applicants had allowed respondent No. 2 to stay in her matrimonial house only for a period of 4 days after the marriage and, from thereafter, she is compelled to live in her parental home. In this period of four days of her stay in her matrimonial house after her marriage, all the four accused persons had demanded an amount of Rupees Ten Lakhs and when respondent No. 2 refused to fulfill their demand as already sufficient dowry including a four-wheeler and an amount of Rupees Five Lakhs has been given in dowry, all the four applicants started abusing and beating respondent No. 2. As the stay of respondent No. 2 in her matrimonial house is very short and that is of only four days therefore, it cannot be said that the allegations of demand of dowry and harassment

by the applicants is omnibus and vague. It is further submitted that applicant Smt. Jyoti Daipuriya had also attended the marriage of the complainant and, after the marriage, she had stayed in the matrimonial house of the complainant for some days and during this period itself, she had joined the other applicants in demand of Rupees Ten Lakhs by way of additional dowry and she too harassed and treated respondent No.2 with cruelty, therefore, it cannot be said that near and dear relatives of the husband of the complainant has been falsely implicated or there is no specific allegation against her. It is further submitted that it is well established principle of law that the legitimate prosecution should not be stiffled in the mid way.

Heard the learned counsel for the parties.

So far as the contention of the applicants that the FIR has been lodged by respondent No.2 by way of counter blast to the petition filed under Section 13 of Hindu Marriage Act is concerned, the same is not *res-integra*.

The Supreme Court in the case of **Pratibha Vs. Rameshwari Devi** reported in **(2007) 12 SCC 369** has held as under :

> "**14.** From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in exercise of its inherent powers under Section 482 of the Code. We have already noted the

illustrations enumerated in Bhajan Lal case5 and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted hereinabove. The High Court has drawn an adverse inference on account of the FIR being lodged on 31-12-2001 while the appellant was forced out of the matrimonial home on 25-5-2001.

15. In our view, in the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that Respondent 2 husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with Respondent 2 husband.

16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2 husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that

> the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations."

Thus it is clear that the findings given by the civil Court are not binding on the criminal court.

Whether the FIR has been lodged by the complainant by way of counter-blast or not is a highly disputed question of fact. It is also possible that respondent No. 2 must have waited for some time so that applicants may improve their behaviour and may allow her to stay in her matrimonial house with dignity but when she realized that the applicants had already decided to get rid of her and have filed an application under Section 13 of Hindu Marriage Act for grant of divorce then she must have realized that now there is no possibility of reconciliation and in case if she files the FIR complaining harassment or cruelty at the hands of the applicants, then it cannot be said that the said FIR is by way of counter-blast to the application filed under Section 13 of Hindu Marriage Act. On the contrary, this shows the pious act on the part of the complainant to wait for some time so that the matter can be settled and her married life can be saved. Lodging of the FIR after the filing of the application under Section 13 of Hindu Marriage Act can be viewed from this angle also. Thus it is clear that *prima facie* it is also apparent that

respondent No.2 waited for a good opportunity for reconciliation of disputes with her in-laws and only when she realized that the applicants have decided not to bring her back in her matrimonial house then if she lodges a FIR against the applicants then the said FIR cannot be quashed on the ground that it has been filed by way of counter-blast to the application under Section 13 of Hindu Marriage Act.

It is next contended by the counsel for the applicants that the complainant herself has left her matrimonial house because she was in love with somebody else and she also did not allow applicant No. 1 to touch her and, therefore, the false allegations of demand of Rupees Ten Lakhs has been made.

The submission made by the counsel for the applicants cannot be accepted.

The complainant has specifically stated that a Honda Amaze Car and an amount of Rupees Five Lakhs in cash, various gold and silver ornaments and house-hold articles were given in dowry. Whether the allegation against the complainant of having affair with some other person is correct or not or whether is an another attempt of character assassination of the complainant, cannot be decided at this stage. Ultimately, if it is found that the applicants have failed to prove the allegations against the complainant was having love affair with some other person, then this bald allegation would also amount to cruelty and character assassination. However, at this

stage, since it is a disputed question of fact, therefore, this Court, in exercise of power under Section 482 of CrPC, adjudicate.

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in **(2012) 4 SCC 547** has held as under:-

> "**8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.
>
> **9.** In State of W.B. v. Swapan Kumar Guha, reported in (1982) 1 SCC 561, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
>
> "65. … An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to

book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence." (emphasis supplied)

10. On a similar issue under consideration, in Jeffrey J. Diermeier v. State of W.B. reported in (2010) 6 SCC 243, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"20. … The section itself envisages 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. Nevertheless, it

> is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **CBI v. K.M. Saran** reported in **(2008) 2 SCC 471** has held as under:-

> "**17.** We deem it appropriate to recapitulate the legal position which has been crystallised by a series of judgments of the English courts and the Indian courts by referring to some of them.
>
> ***Discussion of decided cases***
> **18.** The scope and ambit of the powers of the High Court under Section 482 CrPC have been elaborately dealt with by a three-Judge Bench of this Court in the recent case Inder Mohan Goswami v. State of Uttaranchal reported in (2007) 12 SCC 1. This Court held that: (SCC pp. 10-11, paras 23-28)
>
> "23. … Every High Court has inherent power to act ex debito justitiae to do real and substantial justice for the administration of which alone, the court exists, or to prevent abuse of the process of the court. Inherent power [of the court] under Section 482 CrPC can be exercised [in the following categories of cases]:
>
> (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.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

* * *

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. Director of Public Prosecutions reported in 1964 AC 1254 Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys reported in 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In R.P. Kapur v. State of Punjab

reported in (1977) 2 SCC 699 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 of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their 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.

27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court [ought to] exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

28. This Court in State of Karnataka v. L. Muniswamy reported in (1977) 2 SCC 699 observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse

of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts."

19. This Court in State of Bihar v. J.A.C. Saldanha reported in (1980) 1 SCC 554 has disapproved the exercise of the extraordinary power of the High Court in issuing a prerogative writ quashing the prosecution solely on the basis of the averments made in the affidavit in the following words: (SCC p. 574, para 28)

"28. … The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more."

20. The classic exposition of the law is found in State of W.B. v. Swapan Kumar Guha reported in (1982) 1 SC 561. In this case, Chandrachud, C.J. in his concurring separate judgment has stated that: (SCC p. 577, para 21)

"21. … if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received."

A.N. Sen, J. who wrote the main judgment in that case with which Chandrachud, C.J. and Varadarajan, J. agreed has laid the legal proposition as follows: (Swapan Kumar Guha case (supra), SCC pp. 597-98, paras 65-66)

"65. … the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. … Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an

offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

21. This Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre reported in (1988) 4 SCC 655 observed in para 7 as under: (SCC p. 695)

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

22. In State of Bihar v. Murad Ali Khan reported in (1988) 4 SCC 655 this Court

observed that the jurisdiction under Section 482 CrPC has to be exercised sparingly and with circumspection. The High Court should not embark upon an inquiry whether the allegations in the complaint are likely to be established by evidence or not.

23. Mr Sushil Kumar, the learned Senior Counsel appearing for the respondent placed reliance on State of Haryana v. Bhajan Lal reported in 1992 SCC (Cri) 426. He particularly laid stress on Para 1 of the guidelines in which this Court observed that allegations incorporated in the FIR or the complaint, even if are taken at their face value and accepted in their entirety, would not prima facie constitute any offence or make out a case against the accused. On analysis of this case, in our opinion, it really does not support the case of the respondent. The ratio of the judgment is clear that the extraordinary powers of the Court under Section 482 CrPC can be exercised only in exceptional circumstances where all allegations incorporated in the FIR or the complaint do not prime facie constitute any offence or make out a case against the accused.

24. In Bhajan Lal case12 this Court in the backdrop of interpretation of various relevant provisions of CrPC 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 Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. This Court in the said judgment made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an

exhaustive list to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following categories: (SCC pp. 378-79, para 102)

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

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

25. This Court in Janata Dal v. H.S. Chowdhary reported in (1992) 4 SCC 305 observed thus: (SCC p. 355, para 132)

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that their decision in exercise of this power is based on sound principles."

26. This Court in Roy V.D. v. State of Kerala reported in (2000) 8 SCC 590 observed thus: (SCC p. 597, para 18)

"18. It is well settled that the power under Section 482 CrPC has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not

quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

27. This Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque reported in (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8)

"8. … 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, court would be justified to quash any proceeding if it finds that initiation/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."

28. In Indian Oil Corpn. v. NEPC India Ltd. reported in (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13)

"13. … Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

29. This Court in CBI v. Ravi Shankar Srivastava reported in (2006) 7 SCC 188 has reiterated the legal position. The Court

observed that the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

30. Now, the crucial question which arises for our adjudication is whether the case of the respondent falls under any of the categories as enumerated in the celebrated case of Bhajan Lal reported in 1992 SCC (Cri) 426. On the basis of the material available on record and the allegations levelled against the respondent in the FIR and the charge-sheet, it cannot be concluded that no ingredients of offence under Section 120-B read with Section 193 IPC are present in the instant case.

31. At this stage, the High Court in its jurisdiction under Section 482 CrPC was not called upon to embark upon the inquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led.

32. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations made in the first information report and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused (the respondent herein).

33. In order to examine and evaluate the allegations of the FIR and the charge-sheet on this parameter, we deem it imperative to set out Sections 193 and 120-B of the Penal

> Code under which FIR and charge-sheet have been filed."

Thus, it is clear that while exercising power under Section 482 of CrPC, this Court cannot look into the correctness and genuineness of the allegations made in the complaint. The allegations should be taken in their entirety and if it is found that no offence is made out, only then the proceedings can be quashed.

Now the next question for determination is whether the allegations made in the FIR prima facie make out an offence against the applicants or not?

It is submitted by the counsel for the applicants that the complainant herself is residing voluntarily in her parental home. In the FIR, it is specifically mentioned by the complainant that she has been compelled by the applicants to leave her matrimonial house and she has been forced to live in her parental home. Compelling a married woman to live in her parental home because of non-fulfillment of demand of dowry by itself would amount to cruelty.

This Court in the case of **Smt. Kalpana Soni and Ors. v. State of M.P. and Anr.** passed in MCRC No. 7520/2012 by order dated 2/5/2017 has held as under:-

> "It is further clear that the complainant was forced to leave her matrimonial house and was forced to live in her parents home at Dabra. Compelling a married woman to leave her matrimonial house and to live along with her parents because of non-fulfillment of demand of any property or valuable security may also amount to

cruelty as defined under Section 498-A of IPC."

A co-ordinate Bench of this Court in the case of **Bhag Singh & Ors. v. Sunita and Ors.** reported in **(1995) 4 Crimes 735** has held as under:-

> ""10. I am of the view that the wife having been left at her parents' place by the accused persons either with the object to meet the demand of dowry or because of wife's failure to meet the said demand, in both the cases the act of the accused person comes within the mischief of cruelty and in both the situation harassment continues.
>
> 11. Once it is held that the harassment continues at the place of residence of her father where the complainant is residing at the time of filing of the complaint, I am firmly of the view that the offence is a continuing one and in view of Section 178(c) of the Code of Criminal Procedure which *inter alia* provides that where an offence is a continuing one, and continues to be committed in more local areas than one, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.
>
> 12. I am fortified in my view by the judgment of Allahabad High Court in *Vijai Ratan Sharma and others. v. State of U.P. and another*, wherein the learned judge has held as follows:-
>
> "Rather, this harassment seems to be continued one. It started when demand of dowry was made outside Ghaziabad and it has continued when she is not being called from Ghaziabad and she has been left there in order to get the dowry. So the offence continues to be committed or it may be possible to say that the offence was partly committed outside Ghaziabad when she was mal-treated and it continues to be at Ghaziabad where she has been left

> and is not being called. So it seems that the Courts at Ghaziabad should have jurisdiction to try the offence of cruelty.""

Thus, it is clear that compelling a married woman to live in her parental home only because of non-fulfillment of demand of dowry by itself may amount to cruelty.

Furthermore, in the FIR as well as in the case diary statements of the witnesses, it has been specifically mentioned that immediately after the marriage, all the four applicants had demanded an additional amount of Rupees Ten Lakhs by way of dowry and when respondent No. 2 refused to fulfill their demand, then she was harassed and beaten and was forced to leave her matrimonial house. The allegations, if they are taken in its entirety, then it can be safely said that these allegations prima facie make out the offence punishable under Sections 498-A, 323/34 of IPC and Section 3/4 of Dowry Prohibition Act.

The Supreme Court in the case of **Taramani Parekh v. State of M.P.** reported in 2015 (11) SCC 260 has held as under:-

> **"11.** Referring to earlier decisions, in Amit Kapoor v. Ramesh Chander reported in (2012) 9 SCC 460, it was observed: (SCC pp. 482-84, para 27)
>
> "27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of

Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made

and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of

prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. State of W.B. v. Swapan Kumar Guha6, Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre7, Janata Dal v. H.S. Chowdhary8, Rupan Deol Bajaj v. Kanwar Pal Singh Gill9, G. Sagar Suri v. State of U.P.10, Ajay Mitra v. State of M.P.11, Pepsi Foods Ltd. v. Judicial Magistrate12, State of U.P. v. O.P. Sharma13, Ganesh Narayan Hegde v. S. Bangarappa14, Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque15, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.16, Shakson Belthissor v. State of Kerala17, V.V.S. Rama Sharma v. State of U.P.18, Chunduru Siva Ram Krishna v. Peddi Ravindra Babu19, Sheonandan Paswan v. State of Bihar20, State of Bihar v. P.P. Sharma21, Lalmuni Devi v. State of Bihar22, M. Krishnan v. Vijay Singh23, Savita v. State of Rajasthan24 and S.M. Datta v. State of Gujarat25.]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration

as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

12. In Kailash Chandra Agrawal v. State of U.P. reported in (2014) 16 SCC 551, it was observed (SCC p. 553, paras 8-9):

> "8. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In Kans Raj v. State of Punjab reported in (2000) 5 SCC 207 it was observed (SCC p. 217, para 5):
>
> > "5. … A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand

dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna v. State of Bihar reported in (2000) 8 SCC 547, Pepsi Foods Ltd. v. Judicial Magistrate reported in (1998) 5 SCC 749, State of Haryana v. Bhajan Lal reported in 1992 SCC (Cri) 426 and Asmathunnisa v. State of A.P. reported in (2011) 11 SCC 259."

13. In the present case, the complaint is as follows:

"Sir, it is submitted that I was married on 18-11-2009 with Sidharath Parakh s/o Manak Chand Parakh r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial home, my husband, father-in-law and mother-in-law started harassing me for not bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs 2,00,000 in cash and only then they would keep me in the house otherwise not. On account of this my husband also used to beat me and my father-in-law and

> my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2-4-2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh and my mother-in-law Smt Indira Parakh for torturing me on account of demanding dowry."
>
> **14.** From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible."

Thus, in the light of the judgment passed by the Supreme Court in the case of **Taramani Parekh (supra)**, this Court is of the considered opinion that the allegations, which have been made against the

applicants, are sufficient for warranting their prosecution under Section 498-A of IPC.

It is next contended by the counsel for the applicants that applicant Smt. Jyoti Daipuriya in MCRC No. 4599/2018 is the sister-in-law of the complainant and she has been falsely implicated only because she is the near relative of the husband of the complainant. It is well established principle of law that in order to implicate the near and dear relatives of the husband of the complainant, there should be specific allegations against them. To buttress his contentions, the counsel for the applicants had relied upon the judgment passed by the Supreme Court in the case of **Preeti Gupta and Ors. Vs. State of Jharkhand and Anr.** reported in **(2010) 3 SCC (Criminal) 473**, **Kansraj Vs. State of Panjab** reported in **(2000) 5 SCC 207**, **Monju Roy Vs. State of Bengal** reported in **(2015) 13 SCC 693**, **Geeta Malhotra Vs. State of U.P.** reported in **(2012) 10 SCC 741**, **Chandralekha and Ors. Vs. State of Rajasthan and Anr.** reported in **(2013) 14 SCC 374**, **Raju @ Nagendra Singh Chauhan and Anr. Vs. State of M.P. and Anr.** reported in **(2018) 1 MPLC 38 (MP)**. It is further submitted that applicant Smt. Jyoti Daipuriya has undergone the amputation of one of her legs because of gangrene suffered by her and she is a handicapped lady and the allegations against her are vague and omnibus.

Considered the submissions made by the counsel for the applicants as well as the counsel for the

respondents.

So far as the requirement of specific and clear allegations against the near and dear relatives of the husband of the complainant is concerned, it is well established principle of law that unless and until there are specific allegations against the near and dear relatives of the husband of the complainant, they cannot be prosecuted as there is an increasing tendency in the society to falsely implicate the near and dear relatives of the witnesses. Thus, the allegations against Smt. Jyoti Daipuriya in MCRC No. 4599/2018 are considered in the light of the judgments on which the reliance has been placed by the counsel for the applicants.

In the present case, the unfortunate thing is that inspite of the fact that a Honda Amaze Car along with a cash amount of Rupees Five Lakhs, gold and silver ornaments as well as the house-hold articles were given in dowry, there is an allegation against the applicants that an additional amount of Rupees Ten Lakhs were demanded by them and because of non-fulfillment of the said demand, respondent No. 2 was forced to leave her matrimonial house and even after one and half years of her marriage, she is still residing in her parental home. Undisputedly, respondent No. 2 had stayed in her matrimonial house for a period of 4 days after her marriage. Applicant Smt. Jyoti Daipuriya had also given a complaint to the Superintendent of Police, Bhind in which she had admitted that she had attended the marriage of

her brother Ashutosh Mishra. Although, in the complaint, she has stated that after attending the marriage, she came back to her own matrimonial house, but whether applicant Smt. Jyoti Daipuriya came back on the next day of the marriage or she stayed for 4 days and, thereafter, she came back to her own matrimonial house is a disputed question of fact. The entire allegations of harassment and cruelty are confined to 4 days after the marriage only and, from thereafter, respondent No. 2 is residing in her parental home. It is the allegation by respondent No. 2 that during this period of four days, a demand of Rupees Ten Lakhs was made and when she refused to fulfill the said demand, then all the four applicants including applicant Jyoti Daipuriya harassed and had beaten respondent No. 2. Under these circumstances, it cannot be said that the allegations made against applicant Jyoti Daipuriya are vague and omnibus.

So far as the handicapness of applicant Smt. Jyoti Daipuriya is concerned, the same cannot be taken as a mitigating circumstance for drawing an inference of innocence in the favor of applicant Smt. Jyoti Daipuriya. The applicants have placed the copy of the charge-sheet on record which also indicates that when the proceedings for reconciliation had taken place before the Parivar Paramarsh Kendra, then on some days, the applicants did not appear and ultimately the complainant made a statement that she would take legal recourse against the

applicants. Thus, it is clear that every attempt was made by the complainant party to somehow resolve the dispute, but it is because of non-cooperation by the applicants, the reconciliation proceedings could not be materialized. Under these circumstances, it cannot be said that there is no sufficient evidence against any of the applicants warranting their discharge. Under these circumstances, this Court is of the considered opinion that there are sufficient allegations against the applicants in the FIR as well as in the case diary statement warranting their prosecution.

Accordingly, order dated 30/12/2017 passed by the JMFC, Bhind in RCT No. 1803/2017 is hereby affirmed.

Before parting with this order, this Court feels it appropriate to issue a word of caution to the trial Court that the observations made by this Court in this order have been made in the light of the limited scope of interference at this stage. The trial Court must decide the trial strictly on the basis of the evidence which would come on record, without getting prejudiced by any of the observations made by this Court.

With the aforesaid word of caution, the applications fail and are hereby **dismissed**.

(G.S.Ahluwalia)
Judge

AKS