

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

ON THE 13TH OF JUNE, 2023

MISC. CRIMINAL CASE NO.11514 OF 2017

BETWEEN:-

1. **SH. BHUPENDRA SINGH NOTEY, AGED ABOUT 47 YEARS S/O SH. TARSEM SINGH NOTEY, R/O FLAT NO.405, RAJUL FLATS, ADARSH NAGAR, JABALPUR, DISTRICT JABALPUR (MADHYA PRADESH)**
2. **SH. TARSEM SINGH NOTEY S/O JAGAT SINGH NOTEY, AGED 79 YEARS,**
3. **SMT. LILA DEVI NOTEY W/O SHRI TARSEM SINGH NOTEY, AGED 77 YEARS, [DEAD]**
4. **SH. KULWANT SINGH S/O SHRI TARSEM SINGH NOTEY, AGED 52 YEARS,**
5. **SMT. SANDEEP KAUR NOTEY D/O SHRI TARSEM SINGH NOTEY, AGED 46 YEARS**

ALL R/O FLAT NO.405, RAJUL FLATS, ADARSH NARAR, JABALPUR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SOURABH SAHU - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH, THROUGH POLICE STATION GORAKHPUR THANA, RAMPUR CHOWKI, DISTRICT JABALPUR (MADHYA PRADESH)**
2. **SMT. GAGANDEEP KAUR, AGED ABOUT 38 YEARS D/O SH. JAGDEV SINGH C/O SH. DILIP KUMAR NAYAK, Q/A NO.906, MAHANADI VIHAR, CUTTACK (ODISHA)**

**R/O H.S. CARRIERS, MADHU PATNA, CUTTACK
(ODISHA)
ALSO R/O H.S. CARRIERS, VEDVYAS BRAHMANI
TARANG, DISTRICT SUNDERGARH, ROURKELA
(ODHISA)**

.....RESPONDENTS

**(SHRI PRADEEP GUPTA – ADVOCATE FOR RESPONDENT NO.1/STATE)
(SHRI MANOJ KUMAR - ADVOCATE FOR RESPONDENT NO.2)**

.....
*This petition coming for on hearing this day, the court passed the
following:*

ORDER

This petition under Section 482 of Code of Criminal Procedure, 1973 has been filed for quashing the F.I.R. No.39/2017 registered at Police Station Gorakhpur, District Jabalpur and Criminal Case No.2547/2017 arising out of charge-sheet for commission of offence under Sections 498A, 506, 294 read with Section 34 of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961.

2. Facts giving rise to the petition are that petitioner No.1 Bhupendra Singh Notey married with respondent No.2 Smt. Gagandeep Kaur as per Sikh Traditional Hindu Rites on 14.10.2007 at Gurudwara Aarti Sahib, Puri, Orissa. At the time of marriage petitioner No.1 and respondent No.2 were divorcee and they had entered into wedlock after getting divorce from their previous spouses. Petitioner No.2 is the father of petitioner No.1, while petitioner Nos.4 & 5 are the brother & sister of petitioner No.1 respectively. It is admitted fact that out of wedlock, a daughter was born on 31.10.2008 and her name is Bhavdeep Kaur.

3. On 16.01.2017, respondent No.2/wife submitted an application in writing before Police Gorkhpur, Jabalpur alleging that she resides with her husband Bhupendra Singh Notey at 405, Rajul Flats, Rampur, Police Station Gorkhpur, District Jabalpur. Their marriage was solemnized on 14.10.2007 in Gurudwara Aarti Sahib, Puri, Orissa. Before marriage, they both were divorcee and this fact was known to both of them. Earlier, she lived with her husband in Vaishali, Ghaziabad. After solemnization of marriage, everything went well for few months but gradually her husband started to mentally harass her by saying that she is not as per his standard. Her parents are poor, due to which she has not brought even a single penny from her natal home. In that period of time, her sister-in-law Sandeep Notey, mother-in-law Leela Devi also resided with them at Ghaziabad near about a year and for some period of time. These all three persons used to make a demand of Rs.15,00,000/- (Rs. Fifteen Lacs) and one car from respondent No.2 as she brought nothing in dowry. They also use to say that if demanded dowry is not given to them, then she has to go back to her parental house/natal home. It is alleged that whenever she protested the dowry demand, her husband use to beat her.

4. After one year of marriage, in 2008 she delivered a daughter namely Bhavdeep Kaur that time too, she was asked to bring Rs.50,000/- from parents as expanses of delivery. However, she avoided to disclose all these demands to anyone. Almost, one year ago, before the date of F.I.R., she alongwith her husband started to live in Rajul Flats, Jabalpur. It is further alleged that whenever her elder brother-in-law Kulwant Singh visited their home, he also use to taunt her for small

things and threatened to kill her, her daughter and family members and use to ask her to go away from home alongwith daughter. Her all in-laws were in habit of abusing her, only when situation went beyond her control, she narrated everything to her mother Sharanjeet Kaur, uncle Nimal Singh, aunt Charanjeet and brother Navjot Singh. In December, 2016, her all in-laws called her parents at Jabalpur and asked her to go alongwith them and further threatened that she will be allowed to remain in matrimonial home only if she brings demanded dowry.

5. On the basis of above complaint in writing, F.I.R. bearing Crime No.39/2017 dated 16.01.2017 was registered. After investigation, charge-sheet has been filed before Judicial Magistrate First Class, Jabalpur which at present is pending consideration as RCT No.2547/2017 (*State of M.P. Vs. Bhupendra Singh Notey*).

6. Learned counsel for the petitioners submitted that marriage was solemnized on 14.10.2007 and during tenure of marriage, not a single complaint was reported by respondent No.2 Smt. Gagandeep Kaur against petitioner No.1 and his family members. On 09.11.2016, petitioner No.1/husband had filed a complaint against respondent No.2 for being physically assaulted and mentally harassed by the respondent No.2 and same was registered as non-cognizable report as Annexure-A/6. The petitioner and his mother were harassed by respondent No.2 right from the embarkment of marriage. Despite their repeated attempts, respondent No.2 did not mend her behavior. Consequently, petitioner No.1 filed divorce petition (Annexure-A/4) under Section 11 r/w 12 of the Hindu Marriage Act for decree of nullity of marriage and dissolution

of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before Family Court, bearing case number M.J.C. No.928A/2016. When respondent No.2 came to know about lodgement of non-cognizable report and divorce petition by petitioner No.1, she with malicious intention lodged F.I.R. on 16.01.2017 against the petitioners with false and manufactured allegations of mental harassment, physical assault and demand of dowry.

7. Learned counsel for the petitioners further submitted that in F.I.R. and in the statements recorded under Section 161 of Cr.P.C., general, bald and omnibus allegations about cruelty and demand of dowry have been made by respondent No.2 without giving any specific date, time or place. It is submitted that F.I.R. has been lodged after unusual long period of 10 years and in this period, no complaint has ever been made or registered against the petitioners. It is further submitted that incident of harassment and demand of dowry are alleged to have taken place in the year 2008 at Ghaziabad but F.I.R. has been lodged after about lapse of 10 years and no explanation has been given for such inordinate delay. Thus, her complaint was time barred and in such situation, learned J.M.F.C. has committed an error in taking cognizance of offence under Section 498A, 506 and 294/34 of IPC, ignoring the time limit prescribed in Section 468 of Cr.P.C.

8. It is further submitted that uncle of respondent No.2 namely Nirmal Singh deliberately made a false F.I.R. bearing Crime No.285/2022 against petitioners at Police Station Uditnagar, Rourkela, Orissa for commission of offence under Sections 341, 294, 323, 506 of

IPC with intention to implicate the petitioners in a false case, but after investigation Rourkela police have filed closure report in the matter on 30.11.2022.

9. It is also submitted that in December 2016, the respondent No.2 and her relatives had reached Jabalpur at petitioners' residence with an intention to cause harm to them. They not only assaulted petitioner and his mother but also mentally and physically tortured and threatened to kill them and in this regard, petitioner's mother had filed complaint (Annexure-A/6) before Superintendent of Police, Jabalpur. The respondent No.2 has blatantly traumatized the petitioners by lodging false F.I.R. and such F.I.R. has ruined their lives.

10. Therefore, placing reliance on the decisions of Hon'ble the Apex Court in the cases of **Kahkashan Kausar @ Sonam Vs. The State of Bihar** reported in **2022 SCC Online SC 162**; **Geeta Mehrotra & Another Vs. State of U.P.** reported in **2012 (10) SCC 741** and a decision of Coordinate Bench of this Court, Bench at Gwalior in the case of **Ramkumar Sharma Vs. The State of Madhya Pradesh** passed in **M.Cr.C. No.16298/2017** on 11.03.2022, it is submitted that respondent No.2 has filed a false complaint against the petitioners. No offence is made out against the petitioners for commission of offence for which charge-sheet has been filed. As the allegations made in the charge-sheet are bald, general and omnibus allegations without mentioning the date, time and place and same has been filed after lapse of period of 10 years with an intention to harass not only the petitioner No.1/husband but also all his family members including his 80 years old

father, brother and sister who are not residing with him and never resided with him after his marriage. Therefore, it is submitted that permitting such prosecution to continue would be abuse of process of law. Thus, he has prayed for quashment of prosecution as far as it relates to the petitioners.

11. On the other hand, learned counsel for respondent No.1/State as well as learned counsel for respondent No.2 have opposed the prayer for quashment of the F.I.R., charge-sheet and prosecution. It is submitted that respondent No.2 is legally wedded wife of petitioner No.1. She has 8 years old daughter Bhavdeep Kaur. In investigation, *prima facie* a case has been found to be made and charges have been framed and now the case is fixed for evidence before the Court of J.M.F.C., Jabalpur. The divorce petition and the complaint dated 09.11.2016 have been filed deliberately to escape from the prosecution. Therefore, placing reliance on the decision of Hon'ble the Apex Court in the case of **X Vs. The State of Uttar Pradesh & Others** reported in **2023 LiveLaw (SC) 26**, it is submitted that once the charge-sheet was filed after the investigation having been found *prima facie* case, it cannot be said that the prosecution was bogus. Reliance is also placed on decision of Hon'ble the Apex Court in the case of **Pratibha Vs. Rameshwari Devi & Others** reported in **2007 AIR SCW 5933**.

12. It is also submitted by learned counsel for the respondent No.1/State as well as learned counsel for the respondent No.2/complainant that in view of specific mention of names in the written complaint as well as in the charge-sheet, it is not a case to quash

the proceedings at this stage. It is also submitted that petitioners have to prove their innocence in the trial. Petitioner No.5 had harassed and demanded dowry in the year 2008 at Vaishali, Ghaziabad. All the petitioners had demanded aforesaid Rs.15,00,000/- (Rs. Fifteen Lacs), a car and Rs.50,000/- at the time of delivery of girl child with a common intention. Therefore, there are no ground to quash the proceedings. Thus, they have prayed for dismissal of the petition.

13. I have heard learned counsel for the parties at length and carefully perused the F.I.R. bearing Crime No.39/2017, statements of respondent No.2 & other witnesses recorded under Section 161 of Cr.P.C., the copy of charge-sheet and other material placed on record and also perused the case laws relied upon by the learned counsel for the parties.

14. It is an admitted fact that petitioner No.2 Tarsem Singh Notey is almost more than 84 years old father of petitioner No.1 Bhupendra Singh Notey. Petitioner No.4 Kulwant Singh is elder brother of petitioner No.1 and petitioner No.5 Smt. Sandeep Kaur Notey is sister of petitioner No.1.

15. On a perusal of the contents of the F.I.R. and statements of respondent No.2/complainant Smt. Gagandeep Kaur, her mother Sharanjeet Kaur, her aunt Charanjeet Kaur & uncle Nirmal Kaur, it is apparent that demand was made in year 2007-2008 when parties were residing at Ghaziabad. It is alleged that she was asked to bring Rs.50,000/- as expenses of delivery. Admittedly, daughter was born in year 2008 while F.I.R./complaint has been filed on 16.01.2017 almost after more than 9 years of the so called incident. It is also apparent that

as per allegations in December 2016, respondent No.2/complainant was asked to go back to her paternal house and to return matrimonial home with the demanded dowry. In fact, no clear and specific allegations have been made against the petitioners about harassment and earlier in connection with demand of dowry and returning to matrimonial home with the demanded dowry appears nothing but to be a counter blast as husband had lodged divorce petition (Annexure-A/4) and complaint (Annexure A/6) against her on 09.11.2016 in Police Station Gorakhpur, Jabalpur for being physically and mentally assaulted by respondent No.2/complainant. A non-cognizable report (Annexure-A/6) was also registered. F.I.R. in question has been lodged on 16.01.2017 at Police Station Gorakhpur, Jabalpur making general, bald and omnibus allegations and that too after lapse of a period of almost 10 years about the incident which took place in the year 2008.

16. Section 468 of Code of Criminal Procedure, 1973 makes a bar to taking cognizance after lapse of period of limitation. Section 468 of Cr.P.C. is reproduced as under :

“Section 468 of Cr.P.C. - Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

17. An offence under Section 498A of IPC is punishable with imprisonment which may extend to three years. It is noteworthy that in FIR respondent No.2 has included names of all family members of the petitioner No.1. It is worth mentioning that petitioner No.4 is elder brother of petitioner No.1 and petitioner No.5 is sister of petitioner No.1 and they were not residing with petitioner No.1 & complainant; likewise petitioner No.2 (father of petitioner No.1) is aged about 79 years. Therefore, the allegations which are having no specific date, time or place goes to show that allegations have been made just to implicate all the family members.

18. It also cannot be overlooked that in December 2016, the relatives of the respondent No.2/complainant wife came to the residence of petitioner No.1 at Rajul Flats, Jabalpur and created mayhem and in this regard complaints (Annexure-A/15 & A/16) were filed before Superintendent of Police, Jabalpur by petitioner No.1 and his mother. In this case, it is noteworthy that petitioner No.3 Leela Devi (mother of petitioner No.1) passed away in 2018. As already discussed that petitioner No.1/husband filed a divorce petition against respondent No.2/complainant in year 2016 and also filed some complaints against

her in Police Station Gorakhpur, Jabalpur, while F.I.R. in question was lodged by the respondent No.2 on 16.01.2017 about her harassment by the petitioners just after the marriage which was solemnized in the year 2007. Respondent No.2 gave birth to a girl child in the year 2008 and for almost about a period of 8-9 years, she remain mum and did not file any complaint about harassment and demand of dowry by the petitioners to anybody till the date of lodging of F.I.R. dated 16.01.2017. Therefore, the prosecution of the petitioners would be seen in back drop of the matrimonial case and the complaint filed against the respondent No.2 by the husband and his mother. One more fact is important to assess the possibility of false implication that petitioner had already filed a report before the police apprehending his and his family members' arrest in a false case.

19. On perusal of statements of uncle, aunt, mother and respondent No.2 as mentioned herein above, it is apparent that general, bald and omnibus allegations regarding demand of dowry have been made. No specific date, time or place has been mentioned.

20. Hon'ble the Apex Court, time and again, has noticed making the family members of the husband as accused by making casual reference to them in matrimonial dispute.

21. In the case of **Geeta Mehrotra & Another Vs. State of U.P. & Another** reported in **(2012) 10 SCC 741**, Hon'ble the Apex Court in paragraphs 18 and 25 has held as under :

“**18.** Their Lordships of the Supreme Court in Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the

sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious

approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

22. In the case of **Manoj Mahavir Prasad Khaitan vs Ram Gopal Poddar & Another** reported in (2010) 10 SCC 673, Hon’ble the Apex Court has held as under:

“12. We reiterate that when the criminal Court looks into the complaint, it has to do so with the open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interest of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482 Cr.P.C.”

23. In the case of **Preeti Gupta & Another vs State Of Jharkhand & Another** reported in (2010) 9 SCC 667, Hon’ble the Apex Court observed that 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. Their Lordships' also remind the social responsibility and obligation of the learned members of the Bar 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.

24. In the case of **Neelu Chopra & Anr vs Bharti** reported in **(2009) 10 SCC 184**, it has been specifically held by Hon'ble the Apex Court in paragraphs 9 and 10 which reads as under :

“**9.** In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”

24. In the case of **Kahkashan Kausar @ Sonam & Others Vs. The State of Bihar & Others** reported in **2022 SCC Online SC 162**, Hon'ble the Apex Court held as under:

“18. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analyzing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the Courts from Proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them.

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

25. In the case of **Raghuvir Vs. State of Maharashtra & Another ; Criminal Appeal No.900/2018 (Special Leave Petition (Criminal) No.10350/2017)**, their Lordships in paragraph 7 has held as under:

“7. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in the **State of Haryana Vs. Bhajan Lal [(1992) Supp (1) 335]**. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with *mala fide* and is maliciously instituted with an ulterior motive, the High Court shall not hesitate in exercise of its jurisdiction under Section 482 of the Code of Criminal procedure to quash the proceeding. Under category 7 as enumerated in **State of Haryana Vs. Bhajan Lal (Supra)** it is held thus, “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.” There cannot be any dispute that the inherent power given to the High Court under Section 482 of the Code of Criminal Procedure is with a purpose and object of advancement of justice. Similar observations are also made by this Court in the case of **Vineet Kumar and Others Vs. The State of Uttar Pradesh and Another [(2017) 13 SCC 369]**. The facts and circumstances of this case clearly attract category no.7 as quoted supra. The High Court did not advert to the relevant facts of the present case while rejecting the petition filed under Section 482 of the Code of Criminal Procedure.”

26. Coming to the facts of this case, upon perusal of the F.I.R. in question, it is apparent that same has been filed after filing of divorce

petition and after filing of complaint of harassment & torture by the petitioner No.1/husband against respondent No.2/wife about torturing him and his mother. It is also apparent that F.I.R. filed by the respondent No.2/wife is a counterblast of the divorce proceedings initiated by petitioner No.1. Filing of report about some incident happened in 2007-2008, after lapse of almost a period of 9 years appears to be clearly an afterthought and abuse of process of law. I am of the view that this case falls in one of the category as illustratively enumerated by Hon'ble the Apex Court in the case of **State of Haryana and Ors. Vs. Ch.Bhajan Lal and Ors**, reported in (1992) Supp. 1 SCC 335.

27. Considering the aforesaid facts and circumstances of the case, it is apparent that no *prima facie* case is made out against the petitioners and permitting to continue such criminal proceedings against them would be abuse of process of law.

28. As far the case law of **X Vs. The State of Uttar Pradesh & Others (supra)** is concerned, facts of that case are not applicable in the facts of the present case as in that case criminal proceedings were quashed observing that original complainant/wife was suffering from disease AIDS and that a divorce petition was also stated to be pending between the parties and Hon'ble the Apex Court was not satisfied with the reasons given by the Court while quashing the criminal proceedings.

29. As far the case of **Sonu Gupta Vs. Deepak Gupta and Others** reported in (2015) 3 SCC 424 is concerned, in that case question was whether Magistrate is required to apply his judicial mind at the stage of cognizance and summoning of the accused persons. It was held that

Magistrate is required to see only a *prima facie* case is made out for summoning the accused persons or not, thus, facts are not identical. Likewise, the case of **Pratibha Vs. Rameshwari Devi & Others** reported in **2007 AIR SCW 5933** also has no application in the present case as in that case, the respondents had demanded and forced complainant/wife to bring Rs.5,00,000/- dowry from her father which she could not bring from parents nor parents can pay aforesaid huge amount. The respondents had not allowed appellant/wife to take back her ornaments and other articles which were gifted to her as stridhan when she was at matrimonial home. Thus, no benefit can be given to the respondent No.2/wife on the basis of aforesaid case laws.

30. This Court is aware of the fact that power to quash the proceedings be generally exercised only when there is no material to proceed against the petitioners, even if the allegations in the complaint are *prima facie* accepted as true. In this case, after considering the allegations in the F.I.R. coupled with the statements of respondent No.2/complainant wife, her mother, aunt and uncle, it is apparent that allegations are omnibus, bald and vague and afterthought against all the petitioners. It would not be out of place to mention here that in this case, respondent No.2/wife has straight away refused to take part in mediation proceedings before mediator.

31. Thus, looking to the facts and circumstances of the case including the material on record, I am of the view that in the case in hand no *prima facie* case is made out against the petitioner No.1/husband and rest of his relatives/petitioners and permitting to continue such criminal

proceedings against them would be abuse of process of law. Hence, prosecution against the petitioners is liable to be quashed. Consequently, F.I.R. No.39/2017 dated 16.01.2017 registered at Police Station Gorakhpur, Jabalpur & charge-sheet of Criminal Case No.2547/2017 pending before Judicial Magistrate First Class, Jabalpur for commission of offence under Section 498-A, 506, 294, 34 of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961 being liable to be quashed and are hereby quashed and the prosecution launched against the petitioners in the aforesaid case is hereby quashed.

32. Accordingly, the present petition under Section 482 of Code of Criminal Procedure, 1973 filed by the petitioners is **allowed**. A copy of the order be immediately sent down to the trial Court at Jabalpur seized with RCT No.2547/2017.

(DINESH KUMAR PALIWAL)
JUDGE

@shish