IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 16th OF APRIL, 2024

WRIT PETITION No. 21586 of 2023

BETWEEN:-

DIPENDRA SHAH S/O SHRI LAKHPATI SHAH, AGED ABOUT 26 YEARS, OCCUPATION: STUDENT VILLAGE MAJHAULIPATH POLICE STATION LANGHADOL DISTRICT SINGRAULI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI GAURAV PRAKASH SHAH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH STATION IN CHARGE POLICE STATION LANGHADOL DISTRICT SINGRAULI (MADHYA PRADESH)**

2. **SH. MOHAR SINGH (ORIGINAL COMPLAINANT) S/O LATE SH. BABU SINGH R/O ADANI COMPANY DONGARI LANGHADOL DISTRICT SINGRAULI (MADHYA PRADESH)**

3. **COLLECTOR / DISTRICT MAGISTRATE OFFICE OF DISTRICT MAGISTRATE DISTRICT SINGRAULI (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE FOR THE RESPONDENTS/STATE AND SHRI JUBIN PRASAD – ADVOCATE FOR RESPONDENT NO.2)

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This petition coming on for admission this day, the court passed the following:

O R D E R

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs :-

> "(i) The Hon'ble Court may kindly be pleased to issue a Writ, particularly in the nature of Certiorari or other, quashing the FIR No. 08/2022, dt.08/1/22 PS Langhadol (Annexure P/1) and all the consequential proceedings thereof.
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> (ii) The Hon'ble Court may kindly be pleased to issue the Writ, particularly in the nature of mandamus, directing Respondent No.3 to stay the proceedings initiated against the Petitioner under Section 5 (a) & (b) of Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 and issued Show Cause Notice dated 31.07.2021.
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> (iii) The Hon'ble Court may kindly be pleased to call for the entire records for kind perusal of this Hon'ble Court.
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> (iv) Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this Petition."

2. It is submitted by counsel for petitioner that an FIR has been lodged by the complainant on the ground that he is working as Shift Supervisor in Adani Enterprises. On 4.1.2022 the construction of weighing machine was going on. At that time, the local resident Dipendra Shah and Rajkumar came on the spot and insisted that the construction work should be stopped. The other employees of the company also reached on the spot. They tried to convince both these

persons that the work of the company is going on and it is not in an illegal manner. Then Dipendra Shah and Rajkumar started abusing them filthily and also started scuffling with the persons, who were working on the site and also extended a threat that in case if they continue with the work, then they would be kill, as a result the work stopped under compulsion. On the next date, i.e. on 5.1.2022 again both the persons namely; Dipendra Shah and Rajkumar abused them and extended a threat. This incident was narrated to the officers of the company and accordingly an FIR was lodged.

3. Challenging the FIR, it is submitted by counsel for petitioner that except offence under section 294 of IPC, all other offences are non-cognizable. It is true that police has filed a chargesheet but if offence under section 294 of IPC is not made out, then the police had no authority to lodge the FIR.

4. It is further submitted that for quashment of the proceedings, this Court has to go through the attending and surrounding circumstances by reading in between the lines to find out as to whether the prosecution is vexatious or frivolous and if it is found that the complaint is the outcome of a frivolous and vexatious allegations, then the accused must not be made to suffer the prosecution.

5. To buttress his contentions, the counsel for petitioner has relied upon the judgment passed by Supreme Court in the case of **Mohd.Wajid and another Vs. State of U.P. and others, decided on 8th August, 2023 in Criminal Appeal No.2340/2023**.

6. Per contra, the petition is vehemently opposed by the counsel for State.

7. Heard the learned counsel for the parties.

8. In order to submit that the FIR does not disclose the commission of offence under section 294 of IPC, it is submitted by counsel for petitioner that since the FIR has been challenged, therefore, the statements recorded cannot be considered and in the FIR, except alleging that the complainant and other co-workers were abused filthily neither the words uttered by the accused persons were mentioned nor it was mentioned that the words uttered by the accused persons were to be the annoyance of others.

9. It is further submitted that no offence under section 323 of IPC is made out because the said ocular evidence is not supported by any documentary evidence because the MLC does not disclose the presence of any injury.

10. It is further submitted by counsel for petitioner that the petitioner is the local resident, who is fighting for the fair compensation and rehabilitation and since the blasting is taking place at a distance of approximately 200 meters away from the house of the petitioner, therefore, he was objecting to the work, which is being carried out by the company and by registering the criminal offences by the officials of the company, they are trying to deter the persons from claiming their legitimate right and, therefore, the FIR is by-product of the malafide action on the part of the complainant.

11. It is further submitted that in the FIR itself it was specifically mentioned that the incident was narrated to the higher officials of the company, therefore, in fact the FIR has been lodged at the instance of a private company, which is carrying out the work and also relied upon the judgment passed by the Supreme Court in the case of **State of Haryana Vs. Bhajan Lal reported in (1992) 1 Supp.335**.

12. Heard the learned counsel for the applicant.

13. The Supreme Court in the case of **Subhash Kumar Vs. State of Uttarakhand** reported in **(2009) 6 SCC 641, Motiram Padu Joshi and others Vs. State of Maharashtra** reported in **(2018) 9 SCC 429, Satpal Vs. State of Haryana** reported in **(2018) 6 SCC 610, Jarnail Singh and others Vs. State of Punjab** reported in **(2009) 9 SCC 719** has held that the FIR is not an encyclopedia and need not contain all minute details. Only the allegations, which normally strike to mind and help in assessing the gravity of crime or identity of culprit is required.

14. However, it is submitted by counsel for applicant that unless and until the complaint makes out a cognizable offence, the FIR should not have been lodged and investigation should not have been conducted.

15. The Supreme Court in the case of **T.Vengama Naidu Vs. T.Dora Swamy Naidu and others,** reported in **(2007) 12 SCC 93** has held that FIR and consequent investigation cannot be quashed unless there is no offence made out. FIR has to be taken on its face value. There is no question of considering the merits of the

allegations contained in the FIR at that stage or testing the veracity of allegations.

16. In **Vinod Raghuvanshi Vs. Ajay Arora and others** reported in **(2013) 10 SCC 581**, it has been held by the Supreme Court that investigation should not be shut out at the threshold, if the allegations have some substance.

17. The Supreme Court in the case of **Satvinder Kaur Vs. State (Govt.of NCT of Delhi) and Another,** reported in **(1999) 8 SCC 728** has held as under :-

> "**14.** Further, the legal position is well settled 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 the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [*State of W.B.* v. *Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. [*Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]"

18. Furthermore, in the present case, the police has already filed the final report and, therefore, this Court for quashing the final report has to go through the entire material, which been collected by police and cannot confine itself to the FIR, which was lodged by the

complainant. During the investigation, the police has also recorded the statement of Mohar Singh (complainant), whose statement has also been filed along with the chargesheet. He has specifically stated that when he tried to convince Dipendra Shah and Rajkumar, then both of them started abusing him in the name of mother and sister and also started scuffling with him and also assaulted him by fists. When Vinod Sharma intervened in the matter, then while going back they extended a threat that in case if the work is restarted then they would be killed.

19. The statement of Vinod Sharma has also been recorded, who has also stated that Dipendra Shah and Rajkumar had abused the complainant in the name of mother and sister and were also scuffling with him and was assaulting him by fists and accordingly he and the labours intervened in the matter.

20. Thus, it is clear that the words, which were being uttered by the applicant, have also been mentioned by the witness in the statements recorded under section 161 of CrPC. Whether those words were annoyance to the others or not, can be clarified by the witnesses during their examination/cross-examination.

21. So far as the offence under section 323 of IPC is concerned, the word "Hurt" has been defined under section 319 of IPC, which reads as under :-

> **"319. Hurt –** Whoever causes bodily pain, disease or infirmity to some person is said to cause hurt."

In case of a hurt, there may not be any external injuries on the body of the complainant and even if a pain is caused to the

complainant, then it would be an offence punishable under section 323 of IPC.

22. Furthermore, the ocular evidence cannot be discarded merely on the ground that it is not supported by any documentary evidence. Even otherwise, in the present case when an offence, which has been registered against the applicant is under section 323 of IPC, then absence of injury on the body of the complainant would not be sufficient to nullify the allegation made by the complainant and witnesses either in FIR or in their statements under section 161 of CrPC.

23. It is next contended by the counsel for the applicant that while exercising power under Article 226 of Constitution of India, this Court by taking into the surrounding circumstances and can read in between the lines to find out as to whether the allegations are the by-product of vexatious and frivolous prosecution or not?

24. It is submitted by counsel for petitioner that the petitioner is owner of the land and the company is conducting blasting at a distance of 200 meters away from his house, as a result extensive damage is being caused to his house. The petitioner, as a representative of the local residents, who are the sufferers of aftershocks of blast, are agitating for their rehabilitation as well as for grant of compensation and in order to suppress the voice of the innocent residents of the locality, false case has been registered against the applicant and, therefore, suffers from malafides.

25. The Supreme Court in the case of **Renu Kumari Vs. Sanjay Kumar and others, reported in (2008) 12 SCC 346** the Supreme

Court after considering the law laid down by the Supreme Court in the case of **R.P.Kapoor AIR 1960 SC 866 as well as State of Haryana Vs. Bhajanlal 1992 Supp.SCC 1335** has held as under:-

> **"9.** "*8*. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to 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 the courts exist. 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 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 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 report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur* v. *State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] 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;
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> (*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;
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> (*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. (AIR p. 869)

10. 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 CrPC, 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 should not be an instrument of oppression, or, needless harassment. The 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 CrPC 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 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 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.
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> (*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.
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> (*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.'

11. As noted above, 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 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 being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and 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 will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal* v. *H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and *Raghubir Saran (Dr.)* v. *State of Bihar* [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi* v. *R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala* v. *O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj* v. *State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]"

The above position was again reiterated in *State of Karnataka* v. *M. Devendrappa* [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] , *State of M.P.* v. *Awadh Kishore Gupta* [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and *State of Orissa* v. *Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50, paras 8-11."

26. Thus, it is clear that if the allegations made in the FIR make out cognizable offence then the malafides of the informant would become secondary in nature.

27. In order to read in between the lines and in order to consider the surrounding circumstances, it was incumbent upon the applicant to place the unimpeachable material on record to show that this Court can consider the defence of the applicant at this stage.

28. The Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi, reported in (2005) 1 SCC 568** has held as under :-

> **"23.** As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra case* [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.
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> *****
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> **25.** Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry,

> trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

29. So far as the scope of interference at the stage of exercising power under Article 226 of Constitution of India or under section 482 of CrPC is concerned, this Court can consider the unconverted allegations only and only thereafter if this Court comes to a conclusion that the allegations made in the FIR or in the chargesheet do not make out an offence then the proceedings can be quashed.

30. It is the case of the petitioner that he is the owner of a land, who is suffering on account of blasting done by the private company and since he is agitating for grant of fair compensation as well as for rehabilitation, therefore, in order to suppress his voice, a false FIR

has been lodged. Except making this verbal submission, nothing has been placed on record to suggest that either the petitioner is the owner of any land situated at the nearby unacquired land or he has suffered the consequences of aftershocks of blasting. Even the petitioner has not placed anything on record to suggest that blasting is taking place at a distance of 200 meters away from his house. This is a defence and in absence of any unimpeachable material, this Court cannot consider it to be a valid defence in favour of the petitioner. It is very easy to make an allegation of malafide but it is very difficult to prove the same and malafide is a necessarily a disputed question of fact and in absence of any evidence, the same cannot be considered and decided by this Court unless and until there is sterling evidence/material in favour of the petitioner to support his contentions.

31. As already pointed out, except making verbal submissions nothing has been placed on record to substantiate his submissions. Accordingly, the allegation of malafide is hereby rejected.

32. Although this Court has already held that *prima facie* an offence under section 294 of IPC is made out, but this Court would like to consider the another argument raised by the counsel for petitioner that if the offence under section 294 of IPC is held to be not made out, then the lodging of the FIR for non-cognizable offence by itself would be bad. As already pointed out, the police has already filed the chargehseet.

33. Section 2(d) of CrPC reads as under :-

> **"2. Definitions.-** In this Code, unless the context otherwise requires,-
> (a) xxx
> (b) xxx
> (c) xxx
> (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
>
> *Explanation*.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

Explanation to section 2(d) of CrPC clearly makes out that if a chargehseet is filed by the police officer for non-cognizable offence, then the said chargesheet would be treated as a complaint and the Investigating Officer shall be treated as the complainant.

34. Furthermore, the Supreme Court in the case of **Ushaben Vs. Kishorbhai Chunilal Talpada and Others** reported in **(2012) 6 SCC 353** has held as under:-

> **"14.** We must now turn to Section 198-A of the Code. It reads thus:
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> "**198-A.** ***Prosecution of offences under Section 498-A of the Penal Code, 1860***.—No court shall take cognizance of an offence punishable under Section 498-A of the Penal Code, 1860 except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by

> the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the court, by any other person related to her by blood, marriage or adoption."

15. A conjoint reading of the above provisions makes it clear that a complaint under Section 494 IPC must be made by the aggrieved person. Section 498-A does not fall in Chapter XX IPC. It falls in Chapter XX-A. Section 198-A which we have quoted hereinabove, permits a court to take cognizance of offence punishable under Section 498-A upon a police report of facts which constitute offence. It must be borne in mind that all these provisions relate to cognizance of the offence by the court.

16. "Complaint" is defined under Section 2(*d*) of the Code. The definition reads as under:

> "**2.(*d*)** '**complaint**' *means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report*.
>
> *Explanation*.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"
>
> (emphasis supplied)

Explanation to Section 2(*d*) makes it clear that a report made by a police officer after

investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant.

17. The above provisions lead us to conclude that if a complaint contains allegations about commission of offence under Section 498-A IPC which is a cognizable offence, apart from allegations about the commission of offence under Section 494 IPC, the court can take cognizance thereof even on a police report.

18. Reliance placed by the High Court on its earlier judgment in *Babubhai Madhavlal Patel v. State of Gujarat,*(1969) 1 Cri LJ 567 (Guj) is misplaced. In that case, the High Court was dealing with all the offences falling under Chapter XX IPC. Initially, the accused were charged under Section 417 read with Section 114 IPC. That charge was given a go-by and a fresh charge in respect of Sections 493 to 496 IPC was framed. These offences fall in Chapter XX IPC. Therefore, the High Court held that cognizance thereof can be taken by the Magistrate only on the basis of complaint filed under Section 190(1)(*a*) of the Code by an aggrieved person. That judgment cannot be applied to the present case. Facts of that case were different and there the High Court was dealing with cognizance of the offences falling under Chapter XX by the Magistrate.

19. The upshot of the above discussion is that no fetters can be put on the police preventing them from investigating the complaint which alleges offence under Section 498-A IPC and also offence under Section 494 IPC. In the circumstances, the appeal must succeed. The impugned order is set aside. Obviously, therefore, the direction to delete Section 494 IPC is set aside. The police shall investigate the complaint in accordance with law."

35. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference.

36. The petition fails and is hereby **dismissed.**

(G.S.AHLUWALIA)
JUDGE

TG/-