IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7820 of 2019 (QUASHING)

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

==========

Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
MR RUTVIJ S OZA(5594) for the Applicant(s) No. 1,2,3
MR DIPAK H SINDHI(5710) for the Respondent(s) No. 2
MS JYOTI BHATT APP for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 31/07/2024

CAV JUDGMENT

1. By way of present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC” for short), the applicants, who are original accused nos.4 to 6, have prayed

for quashing and setting aside the FIR being C.R. No.I-19/2019 registered with Liliya Police Station for the offences under Sections 498A, 504, 506(2), 509 and 114 of the Indian Penal Code (hereinafter referred to as "IPC" for short") and under Sections 3 and 6(1) of the Dowry Prohibition Act.

2. Heard learned advocate, Mr. Rutvij S. Oza for the applicants, learned APP Ms. Jyoti Bhatt for the respondent no.1 – State of Gujarat and learned advocate, Mr. Dipak Sindhi for the respondent no.2.

3. The gist of the FIR is that,

The respondent no.2 herein married with one

06.05.2017 as per Hindu rites and rituals and after the marriage, the respondent no.2 started residing with the accused in a joint family and out of said wedlock, one baby girl was born. It is alleged that however after the marriage, mental and physical harassment was meted out to the respondent no.2 as also she was abused on account of insufficient dowry but with a sole intent to save her marriage life, she had tolerated everything. It is alleged that at the time of delivery, when the baby girl was born, mental harassment was meted out and, thereafter, also for one reason or other, harassment was continued and, thereafter, she was driven out from her matrimonial house.

4. Learned advocate, Mr. Rutvij Oza for the

applicants submitted that the impugned FIR is lodged against total six accused persons, wherein the applicant no.1 is sister-in-law (નણંદ), the applicant no.2 is brother-in-law (નણદોઈ) and the applicant no.3 is also brother-in-law (દીયર). Learned advocate submitted that it is the case of the complainant that her marriage was solemnized with the accused no.1 on 06.05.2017 as per Hindu rites and rituals and after the marriage, she started residing with her husband in a joint family since then and initially, she was treated well but immediately after some time, the accused started giving mental and physical harassment to her and also demanded amount of dowry. Learned advocate submitted that if the Hon'ble Court make a cursory glance upon the operative part of the impugned FIR itself, in that event, it is found out that the complainant has mentioned that she is residing at her parental home since last more than 16 months and the impugned FIR has been lodged on 29.06.2019 for the incident, which has occurred during the period between 06.05.2017 to 24.06.2019, which clearly goes on to show that there is gross delay in registration of the FIR and there is no explanation given by her for such huge delay though the father of the complainant is serving in police department. Learned advocate submitted that in fact, the husband of the respondent no.2 i.e. the accused no.1 has filed an application under Section 9 of the Hindu

Marriage Act for restitution of conjugal rights before the court of learned Judge, Family Court, Amreli on 17.06.2019, wherein the notice was issued and on receipt of the said notice, immediately thereafter, the impugned FIR has been lodged on 29.06.2019, therefore, this is nothing but a counterblast to the application filed by the husband, wherein the applicants, who are relatives of the husband, have been wrongly arraigned as accused.

5. Learned advocate submitted that in fact, the applicant nos.1 and 2 are wife and husband and they are residing separately since last many years and at the relevant point of time also, they were not residing with the respondent no.2. Learned advocate submitted that the applicant no.2 is serving in the company viz., TATA Consultancy Services at Gandhinagar since August, 2012 and in support of the said submission, learned advocate has put reliance upon the document produced on record at Page No.27 of the compilation, which is a letter of appointment of the applicant no.2 and submitted that both the husband and wife are residing at Gandhinagar and in support of it, copy of electricity bill is also produced on record. Learned advocate as drawn attention towards the document produced at Page No.28 of the compilation and submitted that in fact, in the year 2017, the applicant no.2 was posted to Germany by his office and, thereafter, he was shifted to Germany and

after some time, he called his wife (i.e. the applicant no.1) to Germany, copies of Visa are also produced on record, which clearly goes on to show that that the present applicants at not at all involved in the commission of crime as they are residing separately since last many years.

6. Learned advocate submitted that so far as the applicant no.3 is concerned, at the relevant point of time, he was serving at Baroda and was residing in a rented premises and, thereafter in the year 2016, he was selected as Deputy Section Officer in Sachivalaya, Gandhinagar and after getting appointment, he started residing there in Gandhinagar. In support of the said submission, learned advocate has drawn attention towards the rent agreement produced on record at Page No.48 of the compilation. Learned advocate submitted that therefore it can safely be said that the respondent no.2 was not residing in a joint family and the applicants are residing separately since last many years, that too, before solemnization of the marriage of the respondent no.2 with the accused no.1.

7. Learned advocate submitted that if the Hon'ble Court make a cursory glance upon the contents of the FIR, in that event, it would be found out that there is no specific incident mentioned in the FIR and general and vague allegations are leveled. Learned advocate submitted that in such cases, wherein the allegations under the provision of

Section 498A of the IPC are levelled with a sole to create pressure and to implicate relatives, in that event, such practice adopted by the complainant has been deprecated by the Hon'ble Supreme Court in number of cases and quashed the proceedings. In support of this submissions, learned advocate has put reliance upon the decision of the Hon'ble Supreme Court in case of **Achin Gupta Vs. State of Haryana,** reported in **2024 (2) GLH 387** and submitted that bare perusal of the contents of the FIR clearly goes on to show that the proceeding instituted by the complainant are nothing but a sheer abuse of theprocess of law and is filed with sole intent to create impediment in the life of the applicants to wreak vengeance.

8. Learned advocate has also put reliance upon the decisions of the Hon'ble Apex Court in case of **State of Haryana Vs. Bhajan Lal**, reported in **AIR 1992 SC 604** as well as in case of **R.P. Kapur Vs. State of Punjab**, reported in **AIR 1960 SC 866 : 1960 Cri LJ 1239** and submitted that considering the principle of law laid down by the Hon'ble Apex Court in the aforesaid decisions, the impugned FIR is required to be quashed and set aside. It is, therefore, urged that the present application may be allowed.

9. Learned APP, Ms. Bhatt has opposed the grant of present application with a vehemence and submitted that the ingredients of the alleged offences are made out and the investigation carried out so far

clearly goes on to show that the applicants have committed alleged offences. It is, therefore, urged that the present application may not be allowed.

10. Learned advocate, Mr. Sindhi appearing for the respondent no.2 has also opposed the present application with a vehemence and submitted that if the Hon'ble Court would make a cursory glance upon the allegations leveled in the FIR, in that event, it would be found that the applicants have committed alleged offences and specific role of each accused is clearly spelt out. Learned advocate submitted that the marriage between the respondent no.2 and the accused no.1 has been solemnized and after the marriage, the respondent no.2 started residing at Liliya and the applicants are close relatives of her husband. Learned advocate submitted that it is alleged that immediately within no time, the accused started giving mental and physical torture to her as also abused her on account of insufficient dowry and the said fact is clearly mentioned in the operative part of the impugned FIR in a very clear terms. Learned advocate submitted that in fact, the applicants used to instigate her husband, due to which, she was beaten by her husband on number of occasions. Learned advocate submitted that on 05.04.2018, the respondent no.2 delivered a baby girl and at that point of time, seizure operation was carried out upon her and when the said fact

was brought to the notice of the accused persons, they had not come to the hospital solely on the ground that the respondent no.2 has delivered a baby girl and on the contrary, she was abused by the accused and also stated that the respondent no.2 will have to bear entire expenses of that baby girl and harassed her to recover the amount of medi-claim. Learned advocate submitted that very serious allegations are leveled against the accused persons. Learned advocate submitted that immediately after registration of the FIR, the applicants have approached this Court by filing present application, wherein this Hon'ble Court has granted stay against further investigation, due to which, investigation could not be carried out by the IO in a proper direction. Learned advocate has tendered copy of the order dated 31.03.2021 passed by the learned Principal Judge, Family Court, Amreli in Family Suit No.35/2019 and submitted that the suit filed by the husband (accused no.1) for restitution of conjugal rights has been dismissed by the learned Judge concerned. Learned advocate submitted that in the FIR itself, the respondent no.2 has specifically narrated about the incidents of cruelty meted out to her and specific name and role of each accused is required mentioned in the FIR in a very graphical manner. Learned advocate, therefore, urged that this application may not be entertained and the investigation may be permitted to be carried out

so that evidence against the applicants can be collected

11. Having heard learned advocates for the parties and having gone through the material and evidence available on record, the only question, which falls for my consideration is as to whether any case has been made out by the applicants, who are close relatives of the husband, for quashing of the impugned FIR in exercise of my inherent powers under Section 482 of the CrPC.

12. At the outset, it is apt to refer the law laid down by the Hon'ble Apex Court in case of **Bhajan Lal (supra)**. The relevant para reads as under:

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.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 or the inherent powers u/s 482 of the Code of Criminal Procedure which we have extracted and reproduced above, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and

to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

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

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order

of a Magistrate as contemplated under Section 155(2) of the Code;

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

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

(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."

13. The Hon'ble Apex Court in case of **R.P. Kapur (supra)** has summarised some categories of cases where inherent power can and should be exercised to quash the proceedings, which are as under,

(i) where it manifestly appears that there is a

legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

14. In view of the ratio enunciated by the Hon'ble Apex Court in the aforesaid decisions as well as other decisions, it is required to be noted that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Criminal Procedure Code to get the FIR quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance then, in such circumstances, the Court owes a duty to look into the FIR with care and a little more closely. The Court while exercising its jurisdiction under Section 482 of the CrPC need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Therefore bare perusal of the

contents of the FIR, it is found out that none of the ingredients to constitute the offences alleged are spelt out.

15. However if the facts of the case on hand are considered, following aspects are emerged from the documents available on record,

(1) the accused no.1 is the husband; the accused no.2 is father-in-law; the accused no.3 is mother-in-law; the accused no.4 (applicant no.1) is sister-in-law (નણંદ); the accused no.5 (the applicant no.2) is brother-in-law (નણદોઇ); and accused no.5 (the applicant no.3) is also brother-in-law (દીયર) of the respondent no.2 respectively;

(2) the marriage of the respondent no.2 with the accused no.1 – husband (who is not before this Court) has been solemnized on 06.05.2017;

(3) after the marriage, the respondent no.2 started residing with the husband along with other family members in a joint family;

(4) the applicant nos.1 and 2 are wife and husband and are residing separately at Gandhinagar, which is supported by the document produced on record;

(5) initially the applicant no.2 has been shifted to Germany because of posting there, which is supported by the document produced on record and, thereafter, the applicant no.1 being his wife, is also shifted to Germany, which is

supported by the documents produced on record by the applicants with regard to Visa;

(6) the applicant no.3 was prior to solemnization of marriage of the respondent no.2 with the accused no.1, residing at Baroda, where he was working, however thereafter in the year 2016, he was selected as Deputy Section Officer in the Sachivalaya, Gandhinagar and, therefore, he was shifted to Gandhinagar and is residing there in a rented premises, which is also supported by the document produced on record;

(7) admittedly, FIR is lodged on 29.06.2019 for the alleged incident, which has taken place for the period between 06.05.2017 to 24.06.2019 and for such huge delay, there is no explanation;

(8) prior to registration of the impugned FIR, the accused no.1 – husband has instituted Family Suit No.35/2019 before the learned Principal Judge, Family Court, Amreli for restitution of conjugal rights. It is not in dispute that the said suit has been dismissed by the court concerned;

(9) on receipt of the notice issued by the court concerned in connection with the family suit filed by the husband, immediately thereafter, the impugned FIR has been lodged;

(10) it is not in dispute and is categorically stated in the impugned FIR that since last

more than 16 months, the respondent no.2 is residing at her parental home;

16. A plain reading of the allegations leveled in the FIR coupled with the above aspects clearly goes on to show that the ingredients of the alleged offences under Sections 498A, 504, 506(2), 509 and 114 of the IPC and under Sections 3 and 6(1) of the Dowry Prohibition Act are not fulfilled qua the applicants, who are close relatives of the main accused – husband. It seems that it is a matrimonial dispute between the husband and wife, wherein as usual, all the family members have been roped in as accused persons. It is an admitted position of fact, which can be supported by above facts that the applicants are residing separately and 16 months prior to registration of the impugned FIR, the respondent no.2 is residing at her parental home, which she has specifically stated in the FIR itself and thus, it can safely be said that the applicants are involved in the aforesaid offence as they are close relatives of the main accused – husband. It is required to be noted that if a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but an abuse of process of the Court. The Court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out *prima facie* case as to whether there is any grain of truth in

the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge. To prevent abuse of process of the Court and to save the innocent from false prosecutions at the hands of unscrupulous litigants, the criminal proceedings, even if they appear to be frivolous and false, should be quashed at the threshold.

17. It is pertinent to note at this juncture that at the time of registration of the FIR under the provision of the IPC, the provision of the Dowry Act is also invoked just to make the offence graver, which is a pressurize tactics adopted by the wife and the said fact has come to the notice of the Hon'ble Supreme Court as well as this Court while dealing with the cases related to such offences. Not only the Hon'ble Supreme Court but also this Hon'ble Court has noted in number of judicial pronouncements that there is a growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband if one of them happens to be of higher status or of a vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing. It is because of the growing tendency to involve the innocent persons, the Hon'ble Supreme Court in case of **Pawan Kumar Vs. State of Haryana**, reported in **AIR 1998 SC 958** has cautioned the Courts to act with circumspection. In the words of the Hon'ble Supreme Court, "often

innocent persons are also trapped or brought in with ulterior motives and therefore this places an arduous duty on the Court to separate such individuals from the offenders. Hence, the Courts have to deal such cases with circumspection, sift through the evidence with caution, scrutinize the circumstances with utmost care." Thus considering the above principal enunciated by the Hon'ble Supreme Court in the aforesaid decision, if the facts of the present case on hand are examined in its entirety, in that event, it would be found that there is no specific incident stated by the respondent no.2 with regard to demand of dowry by the accused. Not only that, as stated above, the respondent no.2 left the matrimonial house with her own will and wish and, thereafter, efforts were being made by the accused – husband by filing family suit for restituion of conjugal rights and immediately thereafter, the impugned FIR has been lodged, which clearly goes on to show that the impugned FIR is nothing but a counterblast to the suit filed by the accused – husband.

18. At this stage, I would like to refer to and rely upon the decision of the Hon'ble Supreme Court in case of **Achin Gupta (supra)**, upon which reliance has been placed by learned advocate for the applicant. In the said decision, the Hon'ble Supreme Court after considering various decisions and provision of law has observed in Paragraph Nos.24 to 37, which read as under,

"24. This Court, in the case of **State of A.P. v. Vangaveeti Nagaiah, reported in (2009) 12 SCC 466 : AIR 2009 SC 2646**, interpreted clause (iii) referred to above, observing thus: -

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would

be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in **State of Haryana vs. Bhajan Lal [1992 Supp (1) SCC 335].** A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

"(1) xxx xxx xxx.

(2) xxx xxx xxx.

(3) xxx xxx xxx.

(4) xxx xxx xxx.

(5) xxx xxx xxx.

(6) xxx xxx xxx.

(7) xxx xxx xxx

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

26. In **Preeti Gupta v. State of Jharkhand, reported in 2010 Criminal Law Journal 4303** (1), this Court observed the following: -

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 which reads as under:

> **"498-A. Husband or relative of husband of a woman subjecting her to cruelty.-** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.- For the purposes of this section, cruelty means:
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such

complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one

complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would

have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep

> scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society. " (Emphasis supplied)

27. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of **Arnesh Kumar v. State of Bihar, (Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014).** In the said case, the petitioner, apprehending arrest in a case

under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before this Court, having failed to obtain the same from the High Court. In that context, the observations made by this Court in paras 6, 7 and 8 respectively are worth taking note of. They are reproduced below: -

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime

Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Penal Code, 1860. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems

that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so.

As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr.P.C.), in the present form

came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. ..." (Emphasis Supplied)

28. In the case of **Geeta Mehrotra & Anr. v. State of U.P. reported in (2012) 10 SCC 741,** this Court observed as under: -

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of

this Court recorded in the matter of **G.V. Rao v. L.H.V. Prasad reported in (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over

their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in **(2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of B.S. Joshi v. State of Haryana** it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his

relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power." (Emphasis supplied)

29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr.P.C. as once there are allegations disclosing the commission of a cognizable offence then whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of **Bhajan Lal** (supra). The category 7 as laid reads thus: -

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

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr.P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass

her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the

investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in

determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be

squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in **Kaslefsky v. Kaslefsky, (1950) 2 All ER 398** observed as under: -

> "When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."
>
> When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly

proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there

is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in American Jurisprudence 2nd edition Vol. 24 page 206. It reads thus: -

> "The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances." (Emphasis supplied)

35. In one of the recent pronouncements of this

Court in **Mahmood Ali & Ors. v. State of U.P & Ors., 2023 SCC OnLine SC 950**, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between

the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr.P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in **Preeti Gupta** (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

> "34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.
>
> 35. The criminal trials lead to immense sufferings for all concerned. Even

> ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society. "

19. Thus in view of the aforesaid ratio enumerated by the Hon’ble Supreme Court in the aforesaid decision, if the facts of the case on hand are examined in its entirety, in that event, in my considered opinion, the impugned FIR is nothing

but an sheer abuse of the process of law and if the same is allowed to be continued, in that invent, it would be nothing short of abuse of process of law and travesty of justice. Hence, this is a fit case, wherein the inherent power under Section 482 of the CrPC should be exercised for the purpose of quashing and setting aside the impugned FIR. Therefore, the present application deserves to be allowed.

20. In the result, the present application is allowed partly. The impugned FIR being C.R. No. I-19/2019 registered with Liliya Police Station and all other consequential proceedings arising out of said FIR are hereby quashed and set aside qua the applicants. It is clarified that the concerned Investigating Officer shall carry out investigation qua rest of the accused persons. Rule is made absolute. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam