IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.12.2017

Dated : 26.06.2018

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

Crl.O.P.Nos. 14573 of 2017 &
Crl.O.P.Nos.17112 and 24197 of 2015

1.Dr.Varun Kumar .. Petitioner/A1 in Crl.OP.No.14573/2017

2.V.Kalpana .. Petitioner/A3 in Crl.OP.No.17112/2015

3.R.Veerasekaran .. Petitioner/A2 in Crl.OP.No.24197/2015

Vs.

1.State rep. by
The Inspector of Police (ADSP)
Central Crime Branch,
Egmore, Chennai-600008.

2.G.Priyadharshni ..Respondents in all Crl.O.Ps.

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COMMON PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.2036 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and to quash the same.

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For Petitioner : Mr.S.Arumuga Raja
in Crl.OP. No. 14573 of 2017

Mr.B.Kumar, Sr. Counsel
for Mr.A.Jenasenan
in Crl.O.P.Nos.17112 & 24197/ 2015

For Respondent-1 :Mr.C.Iyyappa Raj, APP
in all Crl.O.Ps

For Respondent-2 :Mr.R.Sankarasubbu
for Mr.V.Sathish
in all Crl.OPs

COMMON ORDER

The petitioners herein have been arrayed as accused in C.C.No.2036 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai at the instance of the second respondent's complaint for offences under Sections 406, 417, 420, 506(i) IPC, Section 4 of Dowry Prohibition Act, 1961 (herein after referred to as DP Act), Section 4 of Tamil Nadu Prohibition of of Harassment of Women Act, 1998 (herein after referred to as TNPHW Act) and Section 66 of Information Technology Act, 2000 (herein after referred to as IT Act). The petitioner in Crl.O.P.No.14573 of 2017 is the son of the petitioners in Crl.O.P.Nos.24197 & 17112 of 2015.

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2.The case of the prosecution in short is that the defacto complainant and the petitioner in Crl.O.P.No.14573 of 2017 had known each other since 2007, which developed into a promissory relationship to get married. Both of them, had enrolled themselves in an IAS Training Academy at New Delhi and since the defacto complainant did not clear her preliminary examination, she had stayed back in New Delhi for a period of one year for helping Dr.Varun Kumar to prepare for his main examination. The relationship between the defacto complainant and Dr.Varun Kumar was accepted by both their respective family members and it was mutually agreed that the parties will get married in the year 2012. During their stay at New Delhi, the defacto complainant had pledged her jewelleries worth more than Rs.1 lakh to help Dr.Varun Kumar financially for the preparation of his interview. After the interview in the month of April 2011, the attitude of all the petitioners herein changed and they had demanded a sum of Rs.50 lakhs in cash, 2 kgs of gold and a BMW Car for Dr.Varun Kumar on the ground that he was an IPS officer. When the defacto complainant had expressed her inability to meet the dowry demand, their relationship broke and became strained. Dr.Varun Kumar had

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then deleted the mails sent by his father to the defacto complainant in order to erase all the evidences of their relationships. In view of the dowry demand by all the petitioners herein and the failure to marry her contrary to the promise as well as the cruelty meted out to her, the petitioners herein have been charged for the offences under Sections 406, 417, 420, 506(i) IPC, Section 4 of Dowry Prohibition Act, 1961, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 66 of Information Technology Act, 2000, which proceedings is under challenge in the present petitions.

3.Heard Mr.B.Kumar, learned Senior counsel for the petitioners (in Crl.O.P.Nos.17112 & 24197 of 2015), Mr.G.Arumugaraja (in Crl.O.P.No.14573 of 2017) and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent as well as Mr.R.Sankarasubbu, learned counsel for the second respondent in all the petitions.

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4.Mr.B.Kumar, learned Senior counsel appearing for the petitioners submitted that the statements of the witnesses and the documents filed upon by the prosecution does not reveal the

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commission of any offence and as such, the framing of charges against the petitioners itself is liable to be quashed. By relying upon the statement of the witnesses and the documents, the learned Senior counsel submitted that none of the offences for which the petitioners have been charged is made out. In support of his contention, the learned Senior counsel relied on the relevant provisions of the offences for which they have been charged and various judgments of the Hon'ble Apex Court as well as the High Courts and submitted that there is no legally sustainable charges made out as against the petitioners. He further submitted that the petitioner/Dr.Varun Kumar herein is a top ranking IPS officer and that the criminal complaint has been made as a vendetta for the purpose of damaging his reputation. He would also submit that the petitioner Dr.Varun Kumar as well as the defacto complainant had, during pendency of the investigation/framing of charges, had got married to third persons of their own choices and that it would not be appropriate to proceed with the case.

5.Mr.G.Arumugaraja, learned counsel for the petitioner in Crl.O.P.No.14573 of 2017 had adopted the averments made by the learned Senior counsel for the petitioners in Crl.O.P.Nos.17112 & 24197 of 2015.

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6.Mr.Sankarasubbu, learned counsel appearing for the second respondent/defacto complainant submitted that all the petitioners herein had willfully deceived and cheated the defacto complainant with a promise to have her married to Dr.Varun Kumar. In view of such a promise, the defacto complainant had also sacrificed her entire career by assisting Dr.Varun Kumar to write his civil services examination and she was also widely introduced to family friends and relatives of both the parties as the fiancee of Dr.Varun Kumar, but had later dropped the marriage proposal. The learned counsel also submitted that the petitioners herein had demanded dowry to the tune of Rs.50 lakhs, 2 kgs of gold and one BMW car as a pre-condition for the marriage. In view of the dowry demand as well as for having cheated the defacto complainant, this Court should not entertain the request of the petitioners herein seeking for quashing the charges. The learned counsel also submitted that the subsequent events of the defacto complainant married to some other person will have no bearing in the case and that the trial Court should take its own course for coming to a fair and free conclusion.

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7.The learned Additional Public Prosecutor appearing for the first respondent submitted that the charges have been duly framed based on the statements of various witnesses recorded under Section 161(3) of Cr.P.C., as well as certain other material documents. Since the offences have been clearly made out, the proper recourse would be to permit the trial Court to get along with the case and if at all the petitioners are aggrieved, it is always open to them to establish their innocence during the course of trial.

8.I have given careful considerations to the submissions made by the respective counsels.

9.It is not in dispute that the defacto complainant and Dr.Varun Kumar had a love affair even prior to his clearing of his civil services examination. It is neither the case of the defacto complainant nor the petitioners that Dr.Varun Kumar and the defacto complainant were living together or had involved in physical relationship. The grievance of the defacto complainant is that there was a promise from the petitioners for her marriage with Dr.Varun Kumar, which promise was retracted and a demand of dowry was made as a pre- condition for her marriage with him. Her complaint

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came to be investigated and the respondents have been charge sheeted for offences under Sections 417 , 204, 506(i) IPC, Section 4 of DP Act r/w.34 of IPC, Section 4 of TNPHW Act and Section 66 of IT Act. By relying upon the respective definitions of the offences for which the petitioners have been charged, the learned Senior counsel for the petitioners submitted that the ingredients for constituting these offences are conspicuously absent and as such, the offences are not made out. For the sake of convenience, the relevant provisions of all the offences for which the petitioners have been charged are extracted herein:

> ***417. Punishment for cheating*** — *Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*
>
> ***204. Destruction of document to prevent its production as evidence*** — *Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obligates or renders illegible the whole or any part of such document with the*

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intention of prevention the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal intimidation *— Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

Section 4 of DP Act*:[4. Penalty for*

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demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

***Section 4 of TNPHW Act, 1998 reads as follows**: penalty for (harassment or woman)-whoever commits or participates in or abets (harassment of woman) in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, part, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than thousand rupees. Section 4 enjoins penalty for harassment of woman and the words 'any place' by a conjoint reading of Sections 3 and 4*

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of the Act point out that wherever the occurrence takes place it refers to the same and therefore, it applies to the private dwelling house/place.

***Section 66 of IT Act**: If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.*

10.Insofar as the offence of cheating is concerned, the case of the prosecution, as evidenced in the charge sheet, is that Dr.Varun Kumar had a love affair with the defacto complainant with a promise to marry her and all the petitioners had assured the defacto complainant about her marriage with Dr.Varun Kumar and subsequently cheated her by not getting him married to her. The core issue that needs to be addressed in order to evaluate as to whether the offence of cheating has been made out or not is as to whether the deception was at the inception itself and consequently whether promising to marry and breaking such a promise would amount to an act of cheating. Section 415 of IPC defines cheating as follows:

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> *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

11.It is a well established law that in order to constitute the offence of cheating, the deception pointed out in the definition of cheating should be at the inception itself. In other words, Dr.Varun Kumar ought to have had a love affair with no intention of marrying the defacto complainant and falsely make her belief that he intended to marry her. It is not the case of the defacto complainant nor is the statement of any of the witnesses that when Dr.Varun Kumar got introduced to defacto complainant, he had a motive of having a love affair without an intention of getting married to her. On the contrary, it is the case of the defacto complainant as well as the witnesses that Dr.Varun Kumar as well as his family members recognised and introduced her as his fiance to their relatives and

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friends. In the absence of any material to establish that Dr.Varun Kumar had no intention of getting married when both had commenced the love affair, it cannot be said that the alleged deception was at the inception itself and hence, the offence of cheating, as defined under Section 415 IPC, will not be made out.

12.Yet another feature to constitute the offence of cheating is that the intention to deceive must be done fraudulently or dishonestly. Even as per the version of the defacto complainant as well as the statements of the witnesses, the defacto complainant and Dr.Varun Kumar were mutually in love with each other and that during that time, Dr.Varun Kumar had no intention of breaking the alleged promise to marry her. While that being the case, the question of dishonest or fraudulent inducement does not arise. In other words, such alleged deception was also not intentional as per the version of all the witnesses.

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13.The Hon'ble Apex Court in a judgment in ***G.V.Rao Vs. L.H.V. Prasad and others*** reported in ***2000 (3) SCC 693*** had an occasion to render its findings on this aspect, which are extracted below:

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"4.Cheating *is defined in Section 415 of the Indian Penal Code which provides as under:-*

"415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.- A dishonest concealment of facts is a deception within the meaning of this section."

5.The High Court quashed the proceedings principally on the ground that Chapter XVII of the Indian Penal Code deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and, consequently, the FIR was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the defition relates to property, the second part need not

necessarily relate to property. The second part is reproduced below:-

"415.........intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

6.This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

7.As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the

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second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrai Manilal Akhaney vs. State of Bombay, AIR 1956 SC 575 = 1956 Crl.L.J. 1611 = 1956 SCR 483, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad vs. State of West Bengal, AIR 1954 SC 724 = 1954 Cr.L.J. 1806, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

8.Thus, so far as second part of Section 415 is concerned, "property", at no stage, is involved. Here it is the doing of an act or omission to do an act by the complainant, as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or

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harm in body, mind, reputation or property. In an old decision of the Allahabad High Court in Empress v. Sheoram and another, (1882) 2 AWN 237, it was held by Mahmood, J.:- "That to palm off a young woman as belonging to a caste different to the one to which she really belongs, with the object of obtaining money, amounts to the offence of cheating by personation as defined in s.416 of the Indian Penal Code, which must be read in the light of the preceding, s.415."

9.In an another old decision in Queen-Empress v. Ramka Kom Sadhu, ILR (1887) 2 Bombay 59, it was held that a prostitute may be charged for cheating under Section 417 if the intercourse was induced by any misrepresentation on her part that she did not suffer from syphilis.

10.In Queen vs. Dabee Singh and others, (1867) Weekly Reporter (Crl.) 55, the Calcutta High Court convicted a person under Section 417 who had brought two girls and palmed them off as women of a much higher caste than they really were and married to two Rajputs after receiving usual bonus. It was further held that the two Rajputs who married the two girls on the faith that they were marrying women of their own caste and status, were fraudulently and

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dishonestly induced by deception to do a thing (that is to say, to marry women of a caste wholly prohibited to them) which but for the deception practised upon them by the accused, they would have omitted to do. In another case which was almost similar to the one mentioned above, namely, Queen vs. Puddomonie Boistobee, (1866) 5 Weekly Reporter (Crl.) 98, a person was induced to part with his money and to contract marriage under the false impression that the girl he was marrying was a Brahminee. The person who induced the complainant into marrying that girl was held liable for punishment under Section 417 IPC.

14.Insofar as the case of the prosecution that, the promise to marry and subsequent withdrawal of the promise would amount to cheating is concerned, a Division Bench of the Calcutta High Court in Cri. Appeal No.351 of 1998 ***[Abhoy Pradhan V. State of West Bengal] reported in 1999 Cri. L.J.3534*** had held that the same would not amount to cheating since there was neither deception nor a creation of a misconceptional facts in the minds of the respondent. The relevant portion of the order reads as follows:

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15.Now, learned Additional P.P. further drew our attention to Section 90, I.P.C. According to him, the appellant made a false promise to PW 1 that he would marry her and by making such false promise he created a misconception in her mind and as the complainant was under a misconception of fact and also that appellant knew or had reasons to believe at that time that complainant gave such consent in consequence of such misconception it must be held that the consent, if any, given by the complainant, was not at all a consent contemplated under various provisions of the Penal Code. Learned Additional P.P. further contended that such false representation/assurance/promise with knowledge hat the same was false, amounted to a deception within the meaning of Section 415, I.P.C. There-after, learned Additional P.P. further contended hat the aforesaid acts amounted to offences of rape and cheating and the allegations made by the complainant in her complaint as well as in her deposition fulfil all the essential ingredients of the said offences.

16.We find from the complaint as well as from the evidence on record that the appellant

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sincerely wanted to marry the complainant. When he proposed to marry the complainant, his parents assaulted him and drove him out from their house. From these facts, we are unable to hold that appellant made any false promise/representation/assurance to the complainant with knowledge that such promise /representation/assurance was false in any manner. On the contrary we find that it is the specific case of the complainant as stated by her in her complaint as well as in her deposition that the appellant was all through serious and sincere to marry the complainant. This subsequent failure to marry the complainant does not prove that when he made such promise/ representation/assurance, same were made with knowledge that such promise /assurance/representation were false. Otherwise, the very distinction between ordinary breach of promise/contract and the offence of cheating would disappear. We are, therefore, of the firm opinion that the facts attributed to the appellant do not amount to any attempt to create any false conception of facts in the mind of the complainant or that the appellant at that time had any intention to deceive the complainant. In view of the aforesaid clear admissions made by

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the complainant in most unambiguous terms in her complaint as well as in her deposition, we are constrained to hold that appellant never practised any deception upon the complainant nor did he make any attempt to create some false conception of facts in a mind of the complainant. This being so, we have absolutely no hesitation in our mind to hold that the appellant neither committed the offence of rape nor any offence of cheating as defined in Sections 375 and 420, I.P.C. Respectively. From subsequent failure of the appellant to marry the complainant we cannot jump to a conclusion that the deception preceded the actual transaction i.e. the alleged intercourse. For the same reason, we cannot jump to the conclusion that the complainant gave her consent under a misconception of fact or that the appellant did such act with knowledge or at least had reasons to believe that the consent was given in consequence of such misconception. Therefore, even if the allegations made by the complainant in her complaint and deposition are found to be true, yet they do not make out any offence of rape or cheating and hence, verdict of guilt returned by the trial Court cannot be sustained.

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15.Following the aforesaid judgment of the Hon'ble Division Bench, a learned Judge of this Court also had taken a similar view in Crl.O.P.No.1273 of 2011 ***[K.U.Prabhu Raj V. State rep. by the Inspector of Police, AWPS, Tambaram and another reported in 2012 (3) MWN (Cr.) 14]***, which reads as hereunder:-

> *"16.A cursory perusal of the above provision would make it clear that there are atleast three essential ingredients constituting an offence of cheating which should be made out from the materials available on record. They are as follows:-*
>
> *"(1)Deception of any person;*
>
> *(2) Fraudulently or dishonestly inducing that person*
>
> *(i)to deliver any property to any person or;*
>
> *(ii) to consent that any person shall retain any property, or and*
>
> *(3) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."*

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17.The learned counsel for the second respondent would further submit that the offence involved in this case falls within the ambit of the third limb of Section 415 I.P.C as enumerated above. According to the learned counsel, but for the promise made by the petitioner, the daughter of the second respondent would have married someone-else and settled down in her life. Thus, according to him, the petitioner has committed a clear offence of cheating. In my considered opinion, it is not so. As has been held by the Division Bench of the Calcutta High Court in Abhoy Pradhan v. State of W.B case (cited supra), mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all. On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not done or omitted to do but for the deception. In this case, absolutely, there are no materials available on record to show that because of the promise made by the petitioner, the daughter of the second respondent has done anything or omitted to do something which has the tendency to cause damage or harm to the body or mind or

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reputation or property of the daughter of the second respondent. In the absence of the same, the entire allegations found in the records, in my considered opinion, would not make out an offence under Section 417 or 420 I.P.C., at all.

18.In G.V.Rao v. L.H.V Prasad and others case, (cited supra), the Hon'ble Supreme Court has held that there should have been inducement, either dishonestly or fraudulently, and because of such inducement, the person induced should have done or omitted to do something which she would not have otherwise done or omitted to do. As I have already stated, in this case, absolutely there is no such material on record to satisfy the above requirement."

16.In ***G.V.Rao v. L.H.V Prasad and others*** case, (cited supra), the Hon'ble Supreme Court has held that there should have been inducement, either dishonestly or fraudulently and because of such inducement, the person induced should have done or omitted to do something which he would not have otherwise done or omitted to do. As I have already stated, there is absolutely no such material on record or relied by the prosecution to satisfy the above requirement. In view of the aforesaid observations, I am of the view

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that the offence of cheating as defined under Section 417 IPC has not been made out against these petitioners.

17.Incidentally, there is contradiction in the version of the prosecution case, with regard to the charge for the offence of cheating. While charging the petitioners for the offences under Section 417, it is their case that there was a promise to marry and subsequent withdrawal of the promise. However, while charging the petitioner under the DP Act, the case of the prosecution is that the marriage came to be cancelled in view of demand of dowry and the defacto complainant's non compliance of the demand. If the later version is accepted as such, the offence under Section 417 will also not be made out.

18.Insofar as the Section 204 IPC which is the next section in which Dr.Varun Kumar has been charged is concerned, on a plain reading of the section, it is seen that the offence pertains to destruction of electronic evidence for the purpose of preventing its production as an evidence. The case of the prosecution is that when Dr.Varun Kumar had produced the mobile phone, the IMEI numbers of the mobile phones in the call data record and IMEI of

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the phones submitted by him did not tally. It is not the case of the prosecution that Dr.Varun Kumar had destroyed the electronic evidence which could be produced in the Court of law, which is an essential ingredient to constitute this offence. In the absence of this ingredient, it can only be concluded that the offence under Section 204 IPC is not made out. Consequently, it can only be held that Dr.Varun Kumar has been baselessly charged for the offence under Section 204 IPC.

19.With regard to the offence under Section 506(i) IPC is concerned, in order to constitute a criminal intimidation, threat by the accused should be made to cause alarm to any other person or make a person to do an act which he is not legally bound to do and vice versa. Section 503 IPC defines criminal intimidation as follows:

> *503. Criminal intimidation — Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

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20.In the present case, the prosecution had charged Dr.Varun Kumar for the offence under Section 506(i) IPC since he had allegedly informed the respondent that he intended to marry a girl of IPS cadre and that if she reveals their affair, he would spoil the reputation of the second respondent/defacto complainant and her family members. In order to attract the ingredients of Section 506 IPC, the intention of the accused must be to cause alarm to the victim and mere expression of the words without intention to cause alarm would not be sufficient. In order to constitute an offence under Section 506 IPC, it must be clearly established that the person charged, actually threatened or injured the person with an intention to cause alarm. In the instant case, the case of the prosecution is that when the defacto complainant had called Dr.Varun Kumar to speak about her marriage with him, he had allegedly retaliated by saying that he would spoil her reputation. Such an act can only be deemed to be an expression of words without any intention to cause alarm and as such, the offence under Section 506 will not be made out.

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21.So far as the offence under Section 4 of DP Act r/w.34 of IPC is concerned, based on the complaint of the defacto complainant, the District Social Welfare Officer (Dowry Prohibition Officer) was called upon to submit a report by conducting an enquiry. Pursuant to the same, the District Social Welfare Officer had conducted a proper enquiry by summoning the petitioners, the defacto complainant as well as other witnesses. Enquiry was conducted on various dates between 24.01.2012 to 21.03.2012. After due consideration of the evidences and proofs, the District Social Welfare Officer, by an order dated 23.04.2012 held that there was no proof recording the demand of dowry and that there would be other reasons for the break in love between Dr.Varun Kumar and the second respondent herein. Though the Investigation Officer had referred to the report of the District Social Welfare Officer, the same was not filed along with the final report. As a matter of fact, when the FIR came to be registered, the provisions of the DP Act was not invoked in view of the negative report of the District Social Welfare Officer. Under Section 8(B)(2)(c) of the DP Act, 1961 and Rules 4 & 5 of the DP Act, it is mandatory for the Dowry Prohibition Officer to collect evidence for the persons

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committing the offence under the Act. This statutory requirement was not complied with by the prosecution at the time of filing of final report. As such, the statement of the learned Senior counsel appearing for the petitioners that the prosecution has wilfully suppressed the report of the Dowry Prohibition Officer, gains prominence and hence it can only be concluded that had the prosecution taken the report of the Dowry Prohibition Officer into account, the inclusion of the offence under DP Act would have been dropped.

22.That apart, the statement of the witnesses with regard to the demand of dowry are vague and lacks details with regard to the place and time of the demand. While dealing with such vague allegations in a charge sheet, the Hon'ble High Court in a judgment in ***Swapnil and others V. State of Madhya Pradesh*** reported in **2014 (13) SCC 567** held as follows:

> 10.*The first appellant and second respondent had in fact solemnized their marriage at Arya Samaj Mandir on 16.06.2007 privately, as they were stated to be in love with each other for sometime. Thereafter only, in the presence of the family members, marriage was solemnized*

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on 24.06.2009. It has to be seen that admittedly the second respondent has been living separately since April, 2011. Thereafter, she had lodged a complaint on 07.09.2011 before the very same police station. The same was duly enquired into and it was closed stating that the dispute is actually between the families which are to be otherwise settled in legal proceedings. If there are such differences between families which are to be settled in legal proceedings, how such differences would constitute and give rise to a successful prosecution under Sections 498A or 506 IPC or under Section 4 of the Dowry Prohibition Act, 1961, is the crucial question.

11. The second respondent has been living separately since April, 2011and hence, there is no question of any beating by the appellants as alleged by her. The relationship having got strained ever since April, 2011, even application for restitution of conjugal rights having been withdrawn on 16.04.2012 as the second respondent was not interested to live together, it is difficult to believe that there is still a demand for dowry on 30.04.2012 coupled with criminal intimidation. The allegations are vague and bereft of the details as to the place and the time of the incident. We had called for the records and have

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> *gone through the same. The materials before the learned Judicial Magistrate First Class, Indore are not sufficient to form an opinion that there is ground for presuming that the accused appellants have committed the offence under the charged Sections. The Additional Sessions Court and the High Court missed these crucial points while considering the petition filed by the appellants under Section 397 and Section 482 of the Cr.PC respectively. The veiled object behind the lame prosecution is apparently to harass the appellants. We are, hence, of the view that the impugned prosecution is wholly unfounded.*
>
> *12.Therefore, to secure the ends of justice and for preventing abuse of the process of the criminal court, the charges framed by the Judicial Magistrate First Class, Indore in Criminal Case No. 10245 of 2012 against the accused appellants are quashed.*

23.The petitioners have also been charged for an offence under Section 4 of TNPHW Act. In order to constitute an offence under Section 4 of the TNPHW Act, the occurrence should be committed in a public place or institution referred to, in the section. In the complaint of the respondent, there is no such mention about

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harassment in a public place or private domain of Dr.Varun Kumar and none of the witnesses have spoken so. Even as per the definition of harassment under Section 2(a) of the said Act, there is no evidence in any of the statement of the witnesses to the effect that the petitioners had involved themselves in any indecent conduct or act against the respondents. A learned Judge of this Court had an occasion to deal on this issue in a judgment in ***S.Selva Kumar V. State through the Inspector of Police, AWPS, Keelakarai, Ramanathapuram District and another*** reported in **2015 (2) MWN Cr. 195** wherein, he had observed as follows:

> *"10. Coming to Section 4 of Tamil Nadu Prohibition of Harassment of Women (amended) Enforcement Act, 2002, this Court is of the view that there is no sufficient material to charge the petitioner under Section 4 of Tamil Nadu Prohibition of Harassment of Women (amended) Enforcement Act, 2002. Thus, in the absence of any attracting material, the said offence is also made out.*
>
> *11. Considering the scope of 506(i) of the*

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Indian Penal Code in Srinivasan Vs. State by Sub Inspector of Police reported in 2009 (4) MLJ (Crl) 1118, in paragraph No.11, this Court has held in the following manner:-

11.In order to attract the ingredients of Section 506 of IPC, the intention of the accused must be to cause alarm to the victim. Mere expression of words without any intention to cause alarm would not suffice. To constitute an offence under Section 506 of IPC it must be shown that the person charged actually threatened another with injury to his person, reputation or property with an intention to cause alarm.

12. In Rajan Vs. State, rep. By Inspector of police reported in 2008 (2) MWN (Cr.) 258, after taking note of the decision rendered by the High Court of Punjab and Haryana, this Court has held in the following manner:-

> *"10. In a similar case, the Punjab and Haryana High Court quashed the proceedings in respect of the offence under Section 506(ii) IPC in a case in Usha Bala Vs. State of Punjab (P&H), 2002 (2) C.C.Cases 320 (P & H), that, Empty threats does not prima facie mean that the case*

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> *under Section 506, IPC is made out against the petitioner. Hence, in face no case is made out against the petitioner.*
>
> *Consequently, FIR No.313, dated 15.07.1999 under Section 406/498-A, IPC of police station, Sadar, Patiala is quashed qua the petitioner only.*
>
> *11.It is seen even in the instant case, except a vague and bald allegation of criminal intimidation, the defacto complainant has not stated that there was any threat to his life or sought for any police protection. Therefore, this Court is of the considered view that even the offence under Section 506(i), I.P.C is not maintainable."*

In view of the same, it can only be held that inclusion of the offence under Section 4 of TNPHW Act is misconceived.

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24.The last offence for which the petitioners have been charged is one under Section 66 of the Information Technology Act, 2008. In order to constitute an offence under Section 66 of the IT Act, it is mandatory that such a prosecution could be only on a scientific or a cyber crime lab report based on the evidence of Cybercrime Lab of the Forensic Department. In the instant case,

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the Cybercrime Forensic Department has reported that no hacking tools were used in the laptops. Even the e-mail received from the service providers and the email host indicates that there was no breach of the complainant's email. However, overlooking the report of the cyber crime lab of the Forensic Department, the petitioners have been charged for an offence under Section 66 of the Information Technology Act 2008 and as such, the inclusion of this provision in the charge sheet is also baseless.

25.In view of the foregoing observations, it is manifestly clear that none of the offences for which the petitioners have been charged with, has been clearly made out. As pointed out in the enquiry report of the District Social Welfare Officer, there could have been many other reasons for the break of the love affair between Dr.Varun Kumar and defacto complainant and by permitting the trial Court to proceed with the criminal trial against all the petitioners herein would only aggravate the ill feelings among the parties and would certainly cause serious prejudice to the petitioners. In the judgment in the case of **State of Haryana vs. Bhajan Lal** reported in **1992 SCC (Cri.) 426,** the Hon'ble Apex Court had dealt with the scope for interference of the High Court

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exercising its powers under Section 482 Cr.P.C. wherein illustrative examples were laid down in cases where the High Courts would be justified in interfering and quashing the proceedings. One such illustration enabling the High Court to exercise its powers under Section 482 Cr.P.C., is where a criminal proceedings is manifestly attended with malafide 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. Following the aforesaid principle, the Hon'ble Supreme Court in a later judgment in **Sunder Babu and others V. State of Tamil Nadu** reported in **2009 (14) SCC 244** held as follows:

> *"7.Though the scope for interference while exercising jurisdiction under Sec.482 Cr.P.C. is limited, but it can be made in cases as spelt out in the case of Bhajan Lal. The illustrative examples laid down therein are as follows:*
>
> > *"1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima*

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facie constitute any offence or make out a case against the accused.

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

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no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

Even a cursory perusal of the complaint shows that the case at hand falls within the category (7) of the illustrative parameters highlighted in Bhajan Lal's case (supra).

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8.The parameters for exercise of power under Sec.482 have been laid down by this Court in several cases.

> *"19.The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. 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. 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 recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal*

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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 course of administration of justice on the principle "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 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 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 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

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promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20.As noted above, the powers possessed by the High Court under Sec.482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. 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

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which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage." "

26.The present case in hand, is a classic example of a maliciously instituted criminal proceedings and hence this Court exercising its powers under Section 482 Cr.P.C., would be justified in quashing the same, thereby enabling the petitioners herein to refrain from undergoing the ordeal of a criminal trial instituted on baseless charges.

27.In the result, the Criminal Original Petitions stands allowed. Consequently, the proceedings in C.C.No.2036 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet stands quashed.

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26.06.2018

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Speaking order
Index:Yes
Internet:Yes

Note:Issue order copy on 06.07.2018
DP

To

1.The XI Metropolitan Magistrate Court,
Saidapet, Chennai.

2.The Inspector of Police (ADSP)
Central Crime Branch,
Egmore, Chennai-600008.

3.The Public Prosecutor,
Madras High Court.

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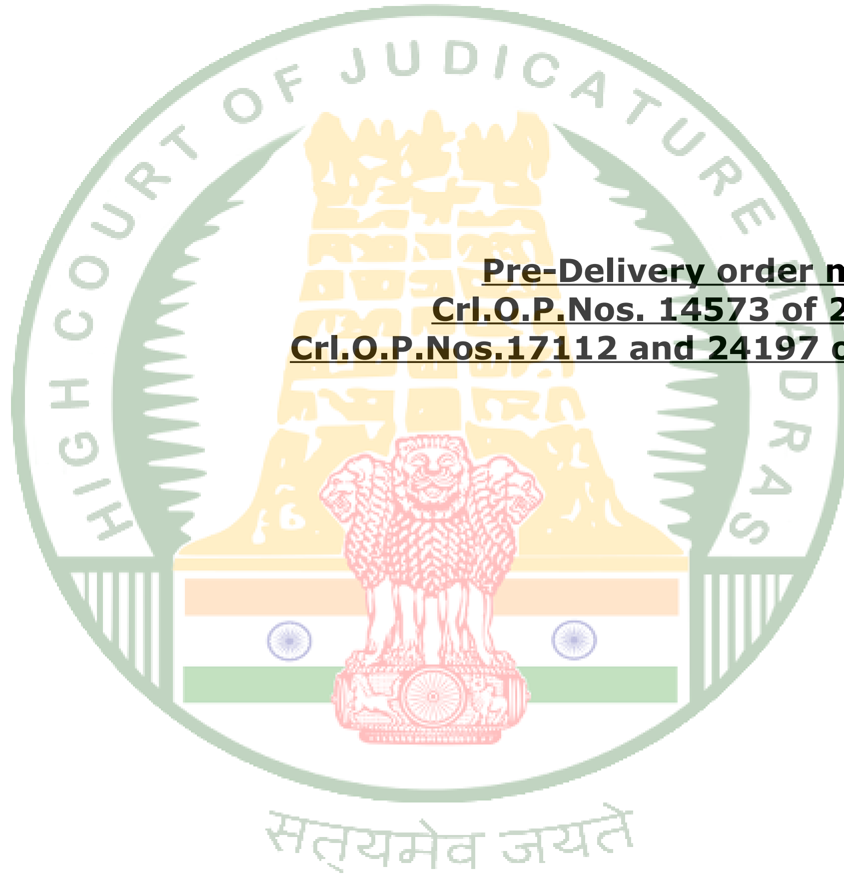
M.S.RAMESH.J,

DP



Pre-Delivery order made in
Crl.O.P.Nos. 14573 of 2017 &
Crl.O.P.Nos.17112 and 24197 of 2015

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