BEFORE THE HONORABLE COURT OF 1ST JUDICIAL MAGISTRATE OF

FIRST CLASS, AMARANAGARAM

C.C. No. ____/2019

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STATE OF ANDHRANADU …….. COMPLAINANT

Vs

KUNAL AND OTHERS …… ACCUSED

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-- MEMORANDUM ON BEHALF OF ACCUSED --

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Table of Contents

LIST OF ABBREVIATIONS 2

INDEX OF AUTHORITIES 3

STATEMENT OF JURISDICTION 5

STATEMENT OF FACTS 6

CHRONOLOGICAL ORDER OF MATERIAL FACTS 8

ISSUES RAISED 10

SUMMARY OF ARGUMENTS/PLEADINGS 11

ARGUMENTS ADVANCED IN DETAIL 12

PRAYER FOR RELIEFS 24

LIST OF ABBREVIATIONS

Abbreviations	Expansions
A	Accused
AIR	All India Reporter
AP	Andhra Pradesh
C.C.	Calendar Case
Cri.L.J	Criminal Law Journal
Cr.P.C.	The Code of Criminal Procedure, 1973
D.P. Act	Dowry Prohibition Act, 1961
I.E. Act	The Indian Evidence Act, 1872
I.P.C.	The Indian Penal Code, 1860
Jhar	Jharkhand
P.W	Prosecution Witness
SC	Supreme Court
SCC	Supreme Court Cases
v. or Vs	Versus

INDEX OF AUTHORITIES

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Central and State Legislations Relied On:

1. The Constitution of India, 1950 (No. CA/83/Cons/49; Date fully effective: 26 January 1950)
2. The Indian Penal Code, 1860 (Act No. 45 of 1860)
3. The India Evidence Act, 1872 (Act No. 1 of 1872)
4. The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)
5. Dowry Prohibition Act, 1961 (Act No. 28 of 1961)
6. The Dowry Prohibition (Maintenance Of Lists Of Presents To The Bride And Bridegroom) Rules, 1985 (G.S.R. 664 (E), dated 19th August, 1985)
7. The Andhra Pradesh Dowry Prohibition Rules, 1998 (G.O. Ms. No. 72, Women's Development Child Welfare and Disabled Welfare (PROG), 17th November, 1998)

Landmark Case Laws/Precedents Cited from Supreme Court and High Courts:

1.	Anant Prakash Sinha vs. State of Haryana	[(2016) 6 SCC 105]
2.	Gopalakrishnan Vs Aswathy Gopalakrishnan	[OP (FC).No. 73 of 2019]
3.	State Of Karnataka vs Dattaraj & Ors	[(2016) 12 SCC 331]
4.	Dalip Singh Vs State Of U.P.	[(2010) 2 SCC 114]
5.	Durjoy Debnath Alias Dulal v. State of Tripura	[(2017) 1 TLR 208]
6.	M. Srinivasulu v. State of A.P.	[(2007) 12 SCC 443]
7.	Surinder Singh v. State Of Haryana	[AIR 2014 SC 817]
8.	Amrutlal Liladharbhai Kotak and Ors. v. State of Gujarat	[AIR 2015 SC 1355]
9.	Durga Prasad & Anr. Vs. The State of M .P	[(2010) 9 SCC 73]
10.	Kishan Sing and Anr. Vs. State of Punjab	[AIR 2008 SC 233]
11.	Sushil Kumar Sharma Vs Union Of India And Ors	[JT 2005 (6) SC 266]

STATEMENT OF JURISDICTION

The Counsel for the Petitioner humbly submits to the Honorable Judicial Magistrate I Court that it has jurisdiction to inquire and try this case, under section 177 of Cr.P.C. which reads as "***Every offence shall ordinarily be inquired and tried by a court within whose jurisdiction is was committed***".

The Court also has power to take cognizance of the matter as per the section 26(a)(iii) of Cr.P.C. which reads as "***Courts by which offences are triable. Subject to the other provisions of this Code,***

(a) any offence under the Indian Penal Code (45 of 1860), may be tried by-

(iii) any other Court by which such offence is shown in the First Schedule to be triable;"

The Court is also requested to determine the consequences, including the rights and obligations of the parties, arising from it's judgment on the issues raised in the instant case.

The present memorandum sets forth the facts, contentions and arguments from the accused standpoint.

STATEMENT OF FACTS

The Counsel on behalf of Accused persons would humbly submits before the Learned Judicial Magistrate I Court that the following are the facts of the present case.

1. That, the following list of persons are involved in the case

A-1	Mr. Kunal	Husband of the deceased
A-2	Mr. Suresh	Father-in-law of the deceased
A-3	Mrs. Suresh	Mother-in-law of the deceased
	Mrs. Kunal (Gayatri)	Deceased
	Mr. Naresh	Father of the deceased
PW-1	Mr. Sanjay	Medical Shopkeeper
PW-2	Mr. Surendra	Servant in A1's household
PW-3	Mr. Vedaiah	Servant in A1's household
PW-4	Mr. Om	Servant in A1's household
PW-5	Mr. Ganesh	Brother of the deceased
PW-6	Dr. O.P. Rao	Medical Examiner
PW-7	Dr. Priyadarshe	Professor of Forensic Medicine
PW-8	Dr. V.K Prasad	Professor of Forensic Medicine

2. Mr. Kunal aged 27 years, is the son of industrialist Mr. Suresh and Deceased, is the daughter of a bureaucrat, Mr. Naresh.
3. Both Kunal and Deceased told their families about their interest to spend the rest of their lives together and both the families agreed.
4. Mr. Suresh however, demanded that Kunal be given extravagant gifts summing up to a monetary value of Rs.1 crore and that at least Rs. 50 lakhs be spent on the wedding, to which Mr. Naresh readily agreed.
5. Kunal always took Deceased's side whenever quarrels between Deceased and her mother-in-law occurred.
6. Kunal also showered Deceased with numerous gifts.
7. The marriage ceremony occurred on 17th July 2017.
8. In August 2017, Deceased began to look exhausted and weak all the time. Often, she vomited blood. When rushed to the hospital during one such incidence, she was

diagnosed with *haematemesis*. After given the necessary treatment in the hospital, Kunal took good care of her at home till she recovered. The deceased's family intentionally concealed about this deteriorating health condition of deceased from Kunal and his family and therein lies a motive in their agreement to anything and everything, to have the marriage to happen.

9. Deceased conceived in December 2017 and gave birth to a baby girl in September 2018. She was sent to her parental home.
10. In December 2018, Kunal reached out to Deceased and brought her back home.
11. On 17th January 2019, Deceased died under unnatural circumstances at S.M.S. Hospital, Jaipur. Deceased's father filed a false police complaint against Kunal and his parents. The complaint was registered as a FIR under sections 498A, 304B, 306/34 of the Indian Penal Code, 1860.
12. Witness statements of all the prosecution witnesses under section 161 Cr.P.C. are not trust-worthy and not in support of the prosecution case facts.
13. Charges were framed under Sections 498A and 304B read with Section 34 of IPC, and the Dowry Prohibition Act, against the accused persons. The case was forwarded to the Judicial Magistrate I.

CHRONOLOGICAL ORDER OF MATERIAL FACTS

1. Kunal and Deceased studied in GG University and they developed feelings for each other.
2. Mr. Suresh demanded that Kunal be given extravagant gifts, as part of their customary exchange of gifts between families of bride and groom and that at least Rs. 50 lakhs be spent on the wedding in tune with the stature of their both families.
3. That, the marriage ceremony on Kunal and Deceased occurred on 17th July 2017.
4. In August 2017, Deceased began to look exhausted and weak all the time. She has symptoms of *haematemesis* which is vomited blood.
5. Deceased conceived in December 2017 and gave birth to a baby girl in September 2018.
6. In December 2018, Kunal reached out to Deceased and brought her back home from parental home.
7. Witness statement of PW-2 proves he is not a direct witness to the alleged crime.
8. Witness statements of PW-3 and PW-4 arises many conflicting aspects than they solve.
9. Witness statement of PW-5 is not trustworthy as apart from him no other witness makes a reference to A-2 and A-3 being present in the room. Moreover, he is an interested witness being the brother of deceased and being he being not direct witness to the alleged crime.
10. PW-6 examined the deceased at about 6 p.m. and noted the patient was semi-conscious with history of consumption of poisonous substance.
11. PW-6 also gave first aid to the deceased Gastric Lavage and referred her to S.M.S. Hospital, Jaipur. He identified 1 injury on the person of the deceased and swelling of both lips.
12. On 17th January 2019, Deceased died at S.M.S. Hospital, Jaipur.
13. Deceased's father filed a police complaint against Kunal and his parents which was registered as a FIR under sections 498A, 304B, 306/34 of I.P.C., 1860.
14. The Post mortem report disclosed 7 injuries on the person of the deceased.
15. Between the examination by PW-6 at 6PM of the day of alleged crime and the post mortem performed by PW-7 and PW-8 on 17th January 2019, none had access to the deceased. There is no explanation from Investigation teams, why PW-6 missed to notice the additional 6 injuries that the medical professors elucidated in their report, post mortem.

16. This cries of foul play with the deceased by someone who has interest in the deceased victim. There seems to be a conspiracy at play to frame the innocent A-1, A-2 and A-3 by some vested interests.
17. Charges were framed under Sections 498A and 304B read with Section 34 of I.P.C., and the D.P. Act, against the accused persons. The case was forwarded to the Judicial Magistrate I.

ISSUES RAISED

1. Did the prosecution fail to prove beyond reasonable doubt that all the three accused had caused *severe cruelty to the deceased, as necessary under section 498A I.P.C.*?
2. Did the prosecution fail to prove beyond reasonable doubt that all the three accused had caused *dowry death to the deceased, as necessary under section 304B I.P.C.*?
3. Are the vague and non-specific allegations of dowry demand laid in Charge sheet, *attract the provisions of D.P. Act* with respect to all the accused?
4. Did the prosecution prove beyond reasonable doubt that all the three accused had *common intention to commit the instant crime, as necessary under section 34 I.P.C. (act performed by the particeps criminis)*?
5. Was the prosecution totally a failure in tracing the real culprits of the deceased-victim in doing total justice?
6. Were the accused falsely implicated in a criminal case and forced to undergo a motivated criminal trial, *violating their fundamental rights granted by the Constitution of India under Articles 21*?

SUMMARY OF ARGUMENTS/PLEADINGS

The Counsel for Accused humbly submits before Learned Judicial Magistrate I Court,

1. That, the accused persons never asked for any valuable property or cash for enriching themselves towards Dowry, in the face of the fact that they themselves are many-a-times financially in a higher pedestal than the bride's family. Any gifts, costly or otherwise, as exchanged between the families is in accordance of the customary exchange of gifts and the settled law does not tag such gifts as Dowry.
2. That, the deceased's family intentionally concealed that she was diagnosed with *haematemesis* and about this deteriorating health condition from Kunal and his family and therein lies a convoluted motive in their ready agreement to anything and everything, to ensure marriage happens at any cost.
3. That, the accused persons had not caused any severe cruelty to the deceased and no sterling evidence is on record of Court to attract provisions of section 498A I.P.C.
4. That, the accused persons had not caused dowry death to the deceased, and no sterling evidence is on record of Court to attract provisions of section 304B I.P.C.
5. That, all the three accused had never any intention to commit any crime and hence not committed any offence under section 34 I.P.C.
6. That, in conclusion, the accused persons have falsely been accused under sections 498A, 304B read with section 34 of I.P.C. and sections 3 and 4 of D.P. Act in a visible conspiracy to frame them.

ARGUMENTS ADVANCED IN DETAIL

A. ALTERATION IN THE CHARGE SHEET

At the outset, the Counsel for Accused would humbly submit before the Learned Judicial Magistrate I Court,

1. That, as per section 216 of Cr.P.C., Court is at discretion to alter the charges at any stage before judgment, and in accordance to which, the State can request the court to alter the charge sheet and add sections 3 and 4 of D.P. Act.

   But the Court would have to satisfy itself, prima facie, that there are valid legal grounds to bring about additional sections or statutes under section 239 Cr.P.C. As is evident from the Charges laid in the Charge sheet, there are no grounds whatsoever to lay charges under D.P. Act. Literally, none.

   In ***Anant Prakash Sinha vs. State of Haryana***[1], Apex Court has recently held that, 'Test of Prejudice to the Accused' has to be kept in mind while adding or altering a charge against him.

   "*the court can change or alter the charge, if there is defect or something is left out. The test is, it must be founded on the material available on the record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment ..... suffice it to say, if the court has not framed a charge despite the material on the record, it has the jurisdiction to add a charge.*"

2. That, since the application of provisions of D.P. Act do not attract to this case at all, the question of double jeopardy doesn't even arise for the consideration of the Court, as it is settled principle of law.

B. NO DOWRY DEMANDED OR EXCHANGED UNDER SECTIONS 3 OR 4 of D.P. ACT

At the outset, the Counsel for Accused would humbly submit before the Learned Judicial Magistrate I Court,

1. That, the essential elements to attract the provisions of sections 2, 3 and 4 of D.P. Act are below:

[1] (2016) 6 SCC 105

Section 2: ***Definition of 'dowry'*** - *In this act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly;*

a) by one party to a marriage to the other party to the marriage;

b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.-The expression `valuable security' has the same meaning as in Sec. 30 of the Indian Penal Code (45 of 1860).

Section 3: ***Penalty for giving or taking dowry*** - *(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:*

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2)Nothing in sub-section (1) shall apply to or, in relation to,-

a) presents which are given at the time of a marriage to the bride (without nay demand having been made in that behalf):

Provided that such presents are entered in list maintained in accordance with rule made under this Act;

b) presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

Section 4: ***Penalty for demanding dowry*** - *(1)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.

In the very recent judgment from Kerala High Court of ***Gopalakrishnan Vs Aswathy Gopalakrishnan***[2],

"*The amount payable towards marriage expenses, according to us, has no characteristics of dowry within the meaning of Section 2 of the Dowry Prohibition Act, 1961.*"

2. That, it is crystal clear that accused persons never asked for any valuable property or cash for enriching themselves towards Dowry as a precondition for the marriage between deceased and A-1, due to the simple fact that the accused themselves are many-a-times financially in a higher pedestal than the deceased's family. Any gifts, costly or otherwise, as exchanged between the families is in accordance of the customary exchange of gifts and the settled law does not tag such gifts as Dowry. Moreover, it is on record that Kunal also showered the deceased with numerous gifts.

In ***State Of Karnataka vs Dattaraj & Ors***[3], it was held,

"*There was no further attribution, as against the respondent – accused nos. 2 to 4. It is therefore not possible for us to accept, that the prosecution was successful in establishing either harassment or violence towards Savita, as against the aforestated accused, nor of any dowry demand. In such view of the matter, it is difficult for us to conclude the culpability of respondent-accused nos. 2 to 4, in the entire occurrence. We are satisfied, that the High Court was fully justified in recording that even the statements of Tukkubai – PW-1 and Dattatry – PW-4, did not attribute any kind of overt act to respondent-accused nos. 2 to 4. The High Court was, therefore, fully justified in acquitting respondent-accused nos. 2 to 4, for the offences punishable under Sections 498A and 304B read with Section 34 of the IPC, as also, for the charges under Sections 3, 4 and 6 of the Dowry Act.*"

[2] OP (FC).No. 73 of 2019
[3] (2016) 12 SCC 331

3. That, there is no list prepared with Dowry/Gift items as is mandatorily necessary, per the Dowry Prohibition (Maintenance Of Lists Of Presents To The Bride And Bridegroom) Rules, 1985. Reproducing rule 2 hereunder,

"2. Rules in accordance with which lists of presents are to be maintained:

(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

Every list of presents referred to in sub-rule (1) or sub-rule (2),-

a. shall be prepared at the time of the marriage or as soon as possible after the marriage:

b. shall be in writing;

c. shall contain,-

i. a brief description of each present;

ii. the approximate value of the present;

iii. the name of the person who has given the present; and

iv. where the person giving the present is related to the bride or bridegroom, a description of such relationship;

d. *shall be signed by both the bride and the bridegroom.*

Explanation. 1.- Where the bride is unable to sign, she may affix her thumb impression in lieu of her signature after having the list read out to her and obtaining the signature on the list, of the person who has so read out the particulars contained in the list.

Explanation 2.- Where the bridegroom is unable to sign he may affix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage."

4. That, there is not an iota of primary evidence or any corroborating witness to vouch for the aspect of Dowry demand or taking dowry thereof. Moreover, none of the

alleged gifted dowry articles were stated to have been recovered from the possession or in custody of the Accused by the Investigation Officer. No averment or evidence is brought on record of Court of the recovery list of dowry items.

Thus, the specific allegations of dowry demand laid in charge sheet, do not attract the provisions of D.P. Act with respect to all the accused.

C) INTENTIONAL CONCEALMENT OF THE DETERIORATING HEALTH CONDITION OF DECEASED FROM ACCUSED'S FAMILY BEFORE PERFORMING MARRIAGE

1. That, in August 2017, deceased began to look exhausted and weak all the time. Often, she vomited blood. When rushed to the hospital during one such incidence, she was diagnosed with a dangerous medical condition called as *haematemesis, in which a person bleeds internally, and vomits blood, as a result*. The necessary emergency treatment to deceased was given in hospital, all expenses of which were borne by A-1 and his family. Only after A-1 took good care of deceased at home, she seemed to have recovered. No one can say for sure, if this is a life-threatening condition.
2. That, the deceased's family intentionally concealed the fact that she was diagnosed with *haematemesis* and about this deteriorating health condition from A-1 and his family and therein lies a convoluted motive by the deceased's family, who are always readily-willing and in agreement to anything and everything, requested by A-1 and his family, with a single-point agenda to ensure marriage between A-1 and the deceased happens at any cost. This is a clear case of the complainant knocking on the doors of the Court with unclean hands. In the landmark reportable judgment of ***Dalip Singh Vs State Of U.P.***[4] from the Apex Court, it was held that,

   "*It is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*"

3. That, oblivious to these heart-wrenching and willfully concealed facts, A-1 was showering deceased with unfathomable affection, in addition to numerous gifts, post marriage which demonstrate the never-ending love shown by A-1 towards

[4] (2010) 2 SCC 114

deceased. There is no other way of looking at this. There is no evidence on record of the Court that the family of the deceased willingly informed the Accused about their deceased daughter's precarious health condition.

D) THE ACCUSED PERSONS HAD NOT CAUSED ANY SEVERE CRUELTY TO THE DECEASED TO ATTRACT PROVISIONS UNDER SECTION 498A I.P.C.

The Counsel for Accused would humbly submit before the Learned Judicial Magistrate I Court,

1. That, the essential elements to attract the provisions of 498A I.P.C are below:

> *"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 extent to three years and shall also be liable to fine.*
> *For the purpose of this section, 'Cruelty' means: -*
> *a) any willful 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 scrutiny or is on account of failure by her or any person related to her to meet such demand".*
> *From the above section it is clear that 'cruelty' means: - Any willful 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 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 scrutiny or is on account of failure by her or any person related to her to meet such demand.*

2. That, it was falsely averred by prosecution that, Deceased conceived in December 2017 and gave birth to a healthy baby girl after 9 months, in September 2018 and immediately thereafter the deceased was sent to her parental home by A-3. None of

the prosecution witnesses deposed as such nor there is any tangible primary evidence on record.

3. In ***Durjoy Debnath Alias Dulal v. State of Tripura***[5], it was held that definite evidence required to hold one guilty of the offence under section 498A – Conviction of the appellant based on the omnibus statements of the wife and her parents alleging torture on the wife.
4. Most importantly, none of the prosecution witnesses aver, not even a whisper, about any cruel conduct of the accused which was of such a nature so as to drive the deceased to commit suicide or to cause grave injury or danger to life, limb or health of the woman nor of any harassment of the woman which is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable scrutiny or is on account of failure by her or any person related to her to meet such demand, even remotely, which is mandatorily necessary to support the prosecution version of the facts. Interesting truth is that, the one person who could have supported the prosecution was the father of the deceased who was never made a witness to the prosecution, which is oddly remained unexplained on the record of the Court.

Thus, the specific allegations of dowry demand laid in charge sheet, do not attract the provisions of 498A I.P.C. with respect to all the accused.

E) THE ACCUSED PERSONS HAD NOT CAUSED ANY DOWRY DEATH TO THE DECEASED TO ATTRACT PROVISIONS UNDER SECTION 304B I.P.C.

The Counsel for Accused would humbly submit before the Learned Judicial Magistrate I Court,

1. That, the essential elements to attract the provisions of 304B I.P.C are below:

   (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or har-assment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry

[5] (2017) 1 TLR 208

death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprison-ment for a term which shall not be less than seven years but which may extend to imprisonment for life.

In the celebrated judgment from Apex Court, ***M. Srinivasulu v. State of A.P.***[6], it was held that,

"*8.4… The presumption shall be raised only on proof of the following essentials:*

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B Indian Penal Code.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

Same principle is held correct in these subsequent Supreme Court judgments.

a. ***Surinder Singh v. State Of Haryana***[7]
b. ***Amrutlal Liladharbhai Kotak and Ors. v. State of Gujarat***[8]

2. That, the evidence of the PW-1 is that A-2 purchased organo-phosphorous sold under the trade name 'MUJAN' from him saying he required the same to kill pests. Being an industrialist who lives in a palatial mansion with a bar, pool, tennis court, home theatre, luxury cars, fancy gadgets, etc. there is no need or occasion that arises for A-2 to personally visit a medical shop and purchase a pesticide to kill pests. This is highly improbable and unbelievable for any prudent person to accept even contemplate that such a rich person like A-2

[6] (2007) 12 SCC 443
[7] AIR 2014 SC 817
[8] AIR 2015 SC 1355

would attempt to do such thing and reeks of clear baseless insinuation to kill more than a pest, a person, i.e., the deceased.

3. That, the evidence of PW-2 is that he heard deceased saying "*Give me salt water, I do not want to die*". Even this is considered for a moment to be true, it is impossible to accept if such a conversation is even possible between a perpetrator and the victim. It is more reasonable to suggest that, the deceased was seeking fervent help from someone in that room, who is not seen by the PW-2.
4. That, reading together the evidence of PW-3, PW-4 and PW-6, it is clear that there is one bruise over the lateral side of deceased's right eyebrow and swollen lips. This is not lethal in any sense.
5. That, PW-3 and PW-4 have seen water on the bed and the deceased's body and reading together the evidence of PW-2, PW-3 and PW-4, all of whom are servants in the household, it is clear that after the deceased was administered or took the poisonous substance, A-1 has provided her salt water in an desperate effort to keep her alive. Only after serving her with salt water, A-1 assured PW-4 that *deceased would be alright*.
6. Except for the evidence of the interested witness PW-5, none of the witnesses aver the presence of the A-2 and A-3 are the scene of offence. Even his statement shows that it is the deceased who she *raised her hand towards her father-in-law and mother-in-law*. Hence there is no possibility or occasion of ensuring corroboration of such untrustworthy witness statement.
7. There is no direct evidence to associate the Accused with either forcibly administering the poisonous substance to the deceased or that they engaged someone.
8. Critical information as culled from the Charge sheet is that, by the time PW-6 examined the deceased, it was 6 PM and the doctor identified 1 injury and swelling of lips on the person of the deceased and she was very much alive and semi-conscious at that time when he performed Gastric Lavage. Incredibly, the PW-7 and PW-8 identified 7 injuries on the person of deceased and both the medical forensic professors unanimously held that deceased *had died due to asphyxia secondary to the organo-phosphorus poison*. This is a clear indication that, the deceased was assaulted after being examined by PW-6 and the choked

to her death which is what the evidence of PW-7 and PW-8 unequivocally established in the post mortem report. No evidence points to the Accused herein to this ghastly turn of events.

9. Limited similarities between the sections were identified in ***Durga Prasad & Anr. Vs. The State of M .P***[9], where the Court held that the nature of the cruelty required to satisfy both sections 304-B IPC and 498-A IPC was the same and needed to be cruelty in connection with demands for dowry. This was confirmed in ***Kishan Sing and Anr. Vs. State of Punjab***[10]. In this case, the victim's husband was acquitted of charges under both sections 304-B and 498-A IPC because he had not treated the victim cruelly or harassed her in connection with demands for dowry.

Thus, the specific allegations of dowry demand laid in charge sheet, do not attract the provisions of 304B I.P.C. with respect to all the accused.

F) THE ACCUSED PERSONS HAD NOT CAUSED ANY OFFENCE TO THE DECEASED TO ATTRACT PROVISIONS UNDER SECTION 34 I.P.C.

The Counsel for Accused would humbly submit before the Learned Judicial Magistrate I Court,

1. That, the essential elements to attract the provisions of 34B I.P.C are below:

   Section 34 - *Acts done by several persons in furtherance of common intention.*

   When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

2. There is no primary object for any of the accused or others of his family members against the deceased, just because either she drank the poisonous pesticide by herself voluntarily or someone else other than Accused i.e., A-1, A-2, or A-3.

[9] (2010) 9 SCC 73
[10] AIR 2008 SC 233

3. To attract the application of section 34 the following three conditions must exist, viz.,
   a) A criminal act must be done by several persons - Here the deceased searched for the pesticide which is a quite common housed hold Usage of which meant for an exclusive purpose and brought it to her bedroom to consume it purposefully
   b) There must be a common intention of all to commit that criminal act - A-1 gave the salt water on observing her physical conditions by the demand of the Deceased, and called upon family doctor for a preliminary first aid
   c) There must be participation of all in the commission of the offence in furtherance of that common intention - Neither A-1, A-2 nor A-3 had any kind of history of quarrel regarding money, or dowry or related issued to act as a motive for them to commit a common intention which would result in the death of the deceased.
4. That, the Accused A-1 and his parents A-2 and A-3 were loving and caring towards the deceased but it was the deceased who took a life-ending drastic step and attempted to maliciously implicate them in a false litigation.

Hence the accused and others (A-1, A-2 and A-3) had never had a common intention to commit an instant crime which would result in the death of Deceased.

This is another maliciously filed litigation on the similar lines of the landmark judgment from Apex Court in ***Sushil Kumar Sharma Vs Union Of India And Ors***[11]. Honorable Supreme Court of India held that,

"*The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give*

[11] JT 2005 (6) SC 266

a license to unscrupulous persons to wreck personal vendetta or unleash harassment. ***It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent****. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are refutable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."*

PRAYER FOR RELIEFS

It is therefore, the Counsel for the accused humbly submits that this Learned Judicial Magistrate I Court may graciously be pleased in the light of arguments advanced and authorities cited to adjudge and declare that,

1) The accused persons A-1, A-2 and A-3 be acquitted from the charges levelled against each of them
2) The de facto complainant who brought a false case to the Court, be levied with heavy cost for bringing upon false litigation on to A-1, A-2 and A-3 under section 250 Cr.P.C.
3) The prosecution team, including the assistant public prosecutor and the investigation officer be saddled with heavy penalties to compensate for the stigma caused to the accused and the loss and damage to their reputation and standing in the society
4) The prosecution team, including the assistant public prosecutor and the investigation officer be subjected to disciplinary departmental inquiry and subsequent action along with mandatory necessary trainings and sensitizing in handling matrimonial cases without high-handedness and total disregard to the rule of law and
5) Pass any order or orders as this Court may deem fit in the interest of equity, justice, fairness and good conscience.