

Writ Petition - Quash of false 498A

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IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW BENCH, LUCKNOW

Writ Petition MB 528 of 2005

Dharm Raj Yadav and others : petitioners

State of U.P. and others : Respondents

Dr. L. P. Misra, learned counsel for the petitioners

Mr. Janardan Singh, learned Additional Government Advocate &

Mr. B. M. Sahai, learned counsel for the complainant

Hon'ble Bhanwar Singh, J., Hon'ble J. M. Paliwal, J.

Dated:10/01/2006

Judgment:

This writ petition has been filed by Sanjeev Kumar Yadav, an Officer of Indian Revenue Service, posted as Assistant Income-tax Commissioner, Moradabad and his eleven family members. All these petitioners have challenged the First Information Report of 11th January, 2005, whereupon a case was registered as Case Crime No.14 of 2005 under Sections 497/498-A/323/504 and 506 read with 511 I.P.C. and 3/4 Dowry Prohibition Act. This F.I.R. was sought to be quashed on the ground of being per se illegal, mala fide and based on concocted facts. During the pendency of petition, charge-sheet dated February 21, 2005 had been filed in a hurried manner as alleged and since mala fide has been attributed to the Investigating Officer as also the first informant and the latter's father, it is also sought to be quashed along with the criminal proceedings initiated thereupon. After that, another charge-sheet dated October 25, 2005 has also been filed against all the petitioners. The main dispute subsists between the husband, namely, Sanjeev Kumar Yadav, the petitioner No.6 and his wife Smt. Deepti Yadav, the informant.

Shortly stated the facts giving rise to this petition are as follows:-

The complainant Smt. Deepti Yadav, D/o Shri Heera Lal Yadav was married to Shri Sanjeev Kumar Yadav on 9th December, 1999. Sanjeev Kumar Yadav was then an Officer of Provincial Civil Service (now he is a member of the Central Civil Service and posted as Assistant Income-tax Commissioner, Moradabad). After her marriage, she stayed with her husband at the latter's native village. As usual, the family members and the relatives of Smt. Deepti offered various gifts on the occasion of marriage. The grandmother of the informant, Smt. Sechna Devi had gifted a Maruti Zen Car. A Marshal Jeep was offered by Deepti's father but it was retained in his own name in all the relevant documents. The case of the informant is that her father was compelled by her husband to gift two drafts - one for Rs.75,000/- and the other for Rs.45,000/-

in the name of Rajiv Kumar Yadav (brother of Sanjeev Kumar Yadav) and two more drafts of Rs.50,000/- and Rs.1 lac in the name of her husband. All these drafts were encashed by the drawees. The father of the girl also gifted various household items, like, a Hero Honda Generator set, colour T.V. and other costly items of day-to-day use valued at Rs.4 lacs. The relatives of the girl also offered as presents various jewellery items to the family members of her husband. Despite huge expenditures incurred by her father, her husband and his parents were not happy with the gift/dowry items. As a matter of fact, Sanjeev Kumar Yadav and his family members had an oblique eye on the ancestral property of her father. They were all greedy persons and used to pass sarcastic remarks against her father and maligned him as a miser. They were not happy even though a cash of Rs.15 lacs and garments worth Rs.2 lacs had been offered by her father on the occasions of 'lagan' and 'tilak' ceremonies. With this greed in his mind, Sanjeev Kumar Yadav stopped coming to her when she was living at her parents' house in Lucknow and when she conceived, Sanjeev Kumar Yadav pressed her for abortion. However, she did not agree and in due course delivered a baby son on 17th December, 2000. In spite of the fact that due intimation was sent to Sanjeev Kumar Yadav, he did not come to see her and her newly born child. The petitioner did not keep the informant in her matrimonial home for long and since she was asked to stay with her parents she came to Lucknow. In the meantime, Sanjeev Kumar Yadav who was preparing for the Central Civil Service competition started demanding a sum of Rs.5 lacs so as to incur expenditure for his study etc. The informant's father, despite economical constraints, but keeping in view a concept of happy life for his daughter, paid the said sum as demanded. But this too was considered to be inadequate and Sanjeev Kumar Yadav continued to cause her mental and physical harassment. When the informant's parents contacted her husband's relatives in village Tadwa (Pilkichha) to find out the cause of Sanjeev Kumar Yadav's indifferent attitude towards the informant, they came to know that Sanjeev and his family members had expected a dowry of Rupees One crore and a palatial house in Mahanagar, Lucknow.

The efforts for reconciliation taken recourse to in July, 2001 proved futile. The F.I.R. further discloses that the greed of Sanjeev Kumar Yadav acquired disproportionate dimensions, when he got selected in Indian Revenue Service (I.R.S.). He and his family members taking advantage of this development started demanding a dowry of Rs.10 lacs and a well-equipped and furnished house in Lucknow. However, such demand was not fulfilled by the informant's father. As a consequence, Sanjeev Kumar Yadav refused to take her with him to the place of posting, i.e. Moradabad. Being compelled in the said circumstances, the informant's father took her to that place on August 21, 2004 and she started living with her husband but barely four days after Sanjeev Kumar Yadav assaulted her and made an abortive attempt to administer her acid. The informant fell seriously sick. Sanjeev Kumar Yadav brought her to her parents' house in Vishwas Khand on 27th August, 2004 and since then he had not taken care of her. The informant was also beaten when she was living with him in district Sultanpur, where he was posted as Deputy Collector.

The informant has also accused Sajeev Kumar Yadav for having illicit relationship with one Neelam Srivastava, Assistant Consolidation Officer, posted at Varanasi. The other family members of Sanjeev Kumar Yadav were also accused of antagonizing the informant by making taunts and jeering remarks. All the gift items given by the informant's father including the Martial Jeep had been grabbed over by the accused-persons.

In such circumstances of strained and bitter relationship, she apprehended a risk to her life and therefore preferred to stay with her parents at Lucknow. Her husband-petitioner also when

under training at Lal Bahadur Shastri National Academy of Administration, Mussorie declared himself as unmarried with a view to invite offers for his marriage.

In view of the above averments, the informant alleged that the accused persons have committed offences under Sections 3/4/6 Dowry Prohibition Act and under Sections 323/307/504/511/506/520 and 498-A I.P.C. It was also mentioned in the report that there was a conspiracy among all the accused persons including Sanjeev Kumar to harass and victimize the informant and eliminate her and thereby they committed all the offences under above Sections read with Section 120-B I.P.C.

The petitioners have denied all the above allegations in their petition. According to them, Sanjeev Kumar had filed a case (Suit No.248 of 2004) on September 3, 2004 for judicial separation against his wife Deepti, the informant, under Section 10 of the Hindu Marriages Act. The said suit is pending in the court of Civil Judge (Senior Division), Jaunpur. As a matter of fact, it was in retaliation of the said proceeding that the informant lodged a false and fabricated F.I.R. on 11th January, 2005 with the Gomti Nagar Police Station. As regards Zen Car and the demand drafts in the name of Sanjeev Kumar and his brother Rajiv Kumar, the petitioners have stated that they are the self-motivated gifts and not the dowry, as no one would take dowry in the form of demand drafts. Delivery of Martial Jeep has been denied and so was rejected the story of subsequent demand for Rs.5 lacs and Rs.10 lacs. Payment of such amounts has been termed to be a white lie. If initially some amount was paid by demand drafts why Rs.15 lacs were not paid by way of the same mode, particularly when relationship between the husband and wife had become strained. The F.I.R. allegations regarding the informant being assaulted at Sultanpur and Moradabad have also been termed to be baseless and the theory of administering acid to Deepti was also said to be a strange incident and more strange was the omission in not getting an F.I.R. lodged. Although the coercive method attributed to Sanjeev Kumar Yadav forcing Deepti to inhale or consume acid being serious in nature could prove fatal to her life, yet she did not lodge any report or made any complaint which omission proves hollowness of the said allegation. It is also alleged further that Deepti's father is a Junior Engineer in Public Works Department. He was not expected to have given huge sums of Rs.20 lacs or so in cash alongwith a Zen Car. The petitioners have expressed their dismay as they could not know the intelligible source of the said Engineer having amassed so much of wealth. Sanjeev Kumar Yadav had disclosed in his petition for dissolution of marriage long before the First Information Report had been lodged that Smt. Deepti and her parents exerted their undue pressure upon him to desert his parents and family and stop supporting them but he did not agree to their suggestion; as a consequence, he was threatened by Deepti and her parents of a serious action like false case of demand of dowry being concocted against him and his family. It appears that in this background, the case for dowry has been fabricated to wreak vengeance against Sanjeev Kumar and his family members. It has also been alleged that one dozen persons of Sanjeev Kumar including himself have been named as accused of dowry demand and victimization. No one of Sanjeev Kumar Yadav's family has been left from being framed in this case and this very fact shows the dimensions of vengeance that Deepti and her father had taken recourse to.

The allegation of illicit relationship with Km. Neelam Srivastava has been termed to be baseless. As regards the manipulations being conducted by the informant and her father in collusion with the police, it has been submitted that the Investigating Officer filed a false affidavit on 23rd February, 2005 stating that charge-sheet against all the accused persons had been filed and it was on the basis of this misleading and false statement that the present writ petition was sought

to be dismissed.

The Senior Superintendent of Police, Lucknow transferred the investigation of this case on March 1, 2005 to Shri Brij Kishore Singh, Station Incharge, Hazaratganj. On the face of this development, submission of the charge-sheet having been submitted a week before i.e. February 23, 2005 seems to be not only false but also a misleading statement given with a view to play fraud upon the Court. The investigation conducted by the erstwhile Investigating Officer Shri K.K. Sharma prior to 1st March, 2005 was a farce and even the statements of the witnesses were noted by him without actually examining them under Section 161 Cr.P.C. Shri K.K. Sharma again misconducted himself by extending his blind favour to the informant by submitting second charge-sheet dated 25th October, 2005 although he was no longer an Investigating Officer. As a matter of fact, Shri Brij Kishore Singh who was seized of the investigation, was appointed as Investigating Officer by transfer from Shri K. K. Sharma by the Senior Superintendent of Police, Lucknow vide his order of March 1, 2005. Thus both the charge-sheets are manipulated, manufactured and submitted in hurried haste - both times to mislead the Court with a view to fetch dismissal order of the present writ petition, under the usual course of practice. The charge-sheets and the criminal proceedings have also been challenged by the petitioner as a fraudulent act and since manipulations and interpolations are crystal clear on the part of the local police and the informant, the petitioners should not be subjected to hazardous effect of criminal proceedings in pursuance of such illegal acts. Even the learned Additional Chief Judicial Magistrate-II has proceeded to take cognizance without applying his mind, just like putting a rubber stamp on it. It has also been submitted on behalf of the petitioners that these circumstances - full of manipulations and interpolations - as narrated above, led to cancellation of the bail of Sanjeev Kumar Yadav and vacation of the stay order issued earlier by this Court.

It is in the above mentioned background that the petitioners have prayed for a Writ in the nature of Certiorari quashing the F.I.R. (Annexure 1), both the charge-sheets of 21st February, 2005 and 25th October, 2005 as also the criminal proceedings pending in the Court of II Additional Chief Judicial Magistrate, Lucknow.

Mr. Brij Mohan Sahai, learned Counsel appearing on behalf of the opposite party No.5 Deepti Yadav has argued that this petition has become infructuous following the submission of the charge-sheets against the petitioners.

Dr. L.P. Mishra, learned Counsel for the petitioners however insisted for hearing of the arguments on the ground that as the entire investigation and submission of the charge-sheets as also the criminal proceedings are based on mala fide of the informant, her father and connivance of the Investigating Officer, this petition deserves to be heard on merit including the objection of Mr. Brij Mohan Sahai. As counter-affidavit of Smt. Deepti Yadav has been filed on 26th November, 2005, this Court with the consent of Dr. L.P. Mishra, learned Counsel for the Petitioners and Mr. Brij Mohan Sahai, learned Counsel for the informant as also Mr. Janardan Singh, learned Additional Government Advocate proceeded to hear the detailed arguments on merits of the case for final decision.

Whereas the sum and substance of the petitioners' case is that they had been victimized by Deepti Yadav's version, as recited in her counter-affidavits dated 26th November, 2005 and 4th August, 2005, the informant's contention is that the averments made by her in her report are true and it was she who was meted out with maltreatment, not only at the hands of her husband

but all other family members of her husband. She was subjected to dowry demand and when she could not meet the demand of a palatial house at Lucknow and a sum of Rs.10 lacs, she was turned out of her matrimonial home by her husband. Also she was assaulted and forced to consume/inhale acid during her stay with Sanjeev Kumar Yadav at Moradabad. Further, she denied in her counter-affidavit that the First Information Report had been lodged as a sequel to the suit for dissolution of marriage. She has not yet been served with any notice of the said proceeding.

The petition is also sought to be dismissed on the ground that the petitioner No.6 Sanjeev Kumar Yadav has not yet surrendered following cancellation of his bail granted to him by the Station Officer, Police Station Gomti Nagar. It was solely on this basis of Sajeev Kumar Yadav being still absconding that the stay order granted by this Court had been subsequently vacated on September 9, 2005. The informant has also controverted the petitioners' allegation that the Court was in any way or manner misled by the Investigation Officer Shri K. K. Sharma. Shri Sanjeev Kumar Yadav being an absconder does not deserve to be granted any relief. The petition should be dismissed on this ground alone.

We have heard Dr. L.P. Misra, learned Counsel for the Petitioners, Mr. Janardan Singh, learned Additional Government Advocate and Mr. Brij Mohan Sahai, learned Counsel for the opposite party No.5 Deepti Yadav and perused the record.

The first contention pressed into service by Mr. Brij Mohan Sahai, learned Counsel for the informant is that this petition has become infructuous as the charge-sheets have been submitted against the petitioner and the Additional Chief Judicial Magistrate II, Lucknow has taken cognizance of the case. In this Case, Mr. Sahai relied upon a decision of the Apex Court in 'State of Bihar and another v. P.P. Sharma and another [1991 Cr.L.J. 1438]' and with reference to the findings and observations of the Apex Court contended that if a Magistrate or Special Judge is seized of the matter, extraordinary jurisdiction under Articles 226 and 227 of the Constitution should not be exercised.

A careful reading of this case would reveal that the Managing Director of BISCOAUN an institution in the Cooperative Sector lodged a report with the police regarding fraudulent transactions for purchase of 'Suraj Brand N.P.K.' and it transpired that a conspiracy was hatched for wrongful gain to M/s. Rajasthan Fertilizers Pvt. Ltd. The erstwhile Chairman and some officers were accused of such fraudulent transactions resulting in wrongful loss to the aforesaid institution as well as the farmers of the State of Bihar. It was in the background of this case that the Apex Court did not approve of the High Court's Order regarding quashing of the complaint and proceedings and held in particular that there was no material to show that the F.I.R. was based on malice or there was any enmity between the accused and the informant. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorized purpose. It was also held that the dominant purpose of registering the case against the accused was to have an investigation done into the allegations contained in the F.I.R. and in the event of there being sufficient material in support of the allegations to present the charge-sheet before the Court. The allegations of mala fide were not found of any consequence. Obviously thus, the facts of the said case were entirely different from the one in hand. In the present case, the wife of Sanjeev Kumar Yadav has accused him of dowry demand and further use of provocative and abusive language and coercive method to force her to consume acid have been alleged. The relationship between the two is admittedly strained. During their six years of marriage, they have

stayed together for a few months as would be discussed subsequently. Malice has been attributed to the informant in getting the F.I.R. lodged and it has pertinently and significantly been alleged by the petitioners that the Lucknow Court of Criminal Law, i.e. the Second Additional Chief Judicial Magistrate is not competent on account of lack of territorial jurisdiction over the areas in which the alleged offences of forcing informant to consume acid, dowry demand and assault had taken place. We would delve upon the territorial issue in detail, but prior to that, we consider it necessary to deal with the basic question of law as raised by the learned counsel for the informant that with the submission of charge-sheet, this Court has become functus officio to proceed with the writ petition initially filed under Article 226 of the Constitution.

This core issue has been answered by this Court in 'Atique Ahmad and another v. State of U.P. and others [2001 (2) JIC 764 (All)]'. Exactly similar point of law was raised in this case. Rejecting the argument that the jurisdiction of the High Court of judicial review stands ousted no sooner a charge-sheet has been submitted by the police, the Court held that this Constitutional Court can take into account the subsequent events in order to do complete justice between the parties and to avoid multiplicity of litigations.

In this case, the High Court also made a reference to the Apex Court's decision in 'State of Haryana and another v. Bhajan Lal and others [1992 Supp (1) SCC 335]' and categorically referred to the guidelines framed by the Apex Court in the said case which for better understanding may be recapitulated as below:-

- " (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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
- (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, 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."

Learned Counsel for both the parties have relied upon Bhajan Lal's case (supra) with reference to the aforesaid guidelines. We would deal with these guidelines while delving upon the allegation of malice and spite attributed to the informant in getting the First Information Report lodged whereupon charge-sheets have been submitted and criminal proceedings drawn.

But before that, we may refer to the Pepsi Foods famous case on the point of jurisdiction of this Court to proceed to decide the writ petition on merit after charge-sheets having been submitted.

The Hon'ble Supreme Court in the aboveresferred decision titled as

'Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others [(1998)5 SCC 749]' held that the High Court can exercise its power of judicial review in criminal matters. Under Article 227, the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature.

Pointing out at the powers of the High Court under Article 226 and 227 of the Constitution and Section 482 Cr.P.C. the Hon'ble Supreme Court held as follows :-

"Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory.

If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code.

It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts.

The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

From the above observations of the Apex Court, it is crystal clear that if a petition has been filed under Article 226 of the Constitution, it can be treated to be as under Article 227 of the Constitution and Section 482 Cr.P.C. for providing immediate relief available under the said Section of the Code. Section 482 Cr.P.C. deals with the abuse of process of law and the Hon'ble Supreme Court held that the High Court should not shy away in exercising its jurisdiction.

In the penultimate para of the decision, the Hon'ble Supreme Court has observed as follows :-

"It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245 (2) of the Code or to face trial when

the complaint and the preliminary evidence recorded makes out no case against them.

It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it. "

From the above principles of law laid down by the Hon'ble Supreme Court, it is established that if it is required in the interest of justice to invoke the jurisdiction of this Court, the Court will do so under its plenary power irrespective of the fact as to whether the provisions of Article 226 or 227 of the Constitution or of Section 482 Cr.P.C. are invoked. Power of the Court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision is not a bar to invoke the jurisdiction of the High Court under Article 227 of the Constitution or under Section 482 Cr.P.C.

We are, therefore, inclined to hold that the contention of Mr. Brij Mohan Sahai, learned Counsel for Deepti Yadav that this Court will stop exercising jurisdiction under Article 227 of the Constitution nor will it proceed to hear this case on merit simply because the charge-sheets have been submitted in the Magisterial Court is without any substance.

The said objection is rejected in view of the Hon'ble Supreme Court's decision in Pepsi Foods Ltd. (supra).

As a consequence, we treat this petition under Article 227 of the Constitution of India and also a petition under Section 482 Cr.P.C.

We may now refer to the guidelines laid down in Bhajan Lal's case (supra) which have been for convenience reproduced above. Guidelines no.5 and 7 as determined in the said case are of greater significance for us to be referred to. Guideline no.5 postulates that the F.I.R. and criminal proceedings can be interfered with where the allegations made in the F.I.R. 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 and similarly guideline no.7 provides that the High Court can interfere with 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. Relying upon the guideline no.5 of the aforesaid citation, Dr. L.P. Misra, learned Counsel for the petitioners referred to the recitals of the First Information Report to the effect that Sanjeev Kumar Yadav had forced the informant to consume/inhale acid during her stay with him at Moradabad and contended that the said charge is absolutely baseless and imaginary and it goes to the extent of absurdity, as though such a dastardly attempt was made by the petitioner no.6 in between 21.8.2004 and 27.8.2004, yet neither the complainant, namely, Deepti Yadav nor her parents took any action for nearly six months.

It would be relevant to quote the said absurd accusation which is as follows:-

The above allegations are so absurd and imaginary that had there been an iota of truth in such

allegations, the informant who is a well-educated person would not have tolerated such a grave misconduct on the part of her husband and certainly she would have lodged a report in Moradabad itself and if not there, she should have informed the police of Lucknow or the higher authorities of the petitioner no.6 at Moradabad. The silence on her part further shows that it is a cock and bull story manufactured by the informant with a view to wreak vengeance with her husband. Such an incident could be taken to be end of the already strained and bitter relationship. If she was doused with acid, she must have suffered burn injuries on her person. Medical examination of her injuries would have proved the occurrence. It is not, that she escaped the attempt but she suffered grievous setback and fell seriously sick. No explanation about the omission has been offered. We therefore hold that it was all a bunkum and a manufactured story so as to wreak vengeance upon the petitioner Sanjeev Kumar Yadav.

Before we proceed to discuss the other allegations of the complaint, it would be most relevant for us to make a reference to the Hon'ble Supreme Court's decision in 'Y. Abraam Ajith and others v. Inspector of Police, Chennai and others [2004 SCC (Cri) 2134]' - a decision which deals with the place of jurisdiction vis-.-vis the offences alleged to have been committed. Incidentally, it was also a case of strained relationship between the husband and wife. All the alleged offences were committed according to the complainant at Nagarcoil but the wife filed the complaint at Chennai Court. The Hon'ble Supreme Court held that no part of cause of action arose in Chennai and therefore, the Magistrate concerned had no jurisdiction to deal with the matter. Accordingly, the proceedings were quashed.

In the case in hand also, the alleged offences of an attempt to force the informant to consume acid and of causing assault to her had taken place at Moradabad. Although it is not clear as to whether the attempt of administering acid was foiled by the informant nor it is clear what injuries she suffered during the assault, yet even if there was some substance in it, in such matter with above allegations only the police of Moradabad District or the Magisterial Court of competent jurisdiction established there were competent to take cognizance of such accusations and deal with them in accordance with law. The F.I.R. in question has been lodged with the police of Gomti Nagar Police Station, Lucknow. Certainly, we would hold that neither the police at Lucknow nor the Court of Second Additional Chief Judicial Magistrate, Lucknow would be competent to take cognizance of the offences which were alleged to have been committed at Moradabad. The F.I.R. does not disclose that either of the two such offences had taken place at Lucknow. Even the allegation of dowry demand was not made at Lucknow.

We therefore hold that the Lucknow Court of Second Additional Chief Judicial Magistrate is not competent to take cognizance of the offences alleged to have been committed at Moradabad. In this context, it would also be relevant to note that the provisions of Section 178 Cr.P.C. which deals with the place of enquiry or trial, do not cover the issue of cognizance being taken by the Lucknow Magisterial Court as none of the offences was committed partly at Lucknow and it is also clear that none of the offences was continuing one.

The provisions of Section 178 Cr.P.C. for convenience may be quoted as below:-

"Place of inquiry or trial -

- (a) When it is uncertain in which of several local areas an offence was committed, or
- (b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

A perusal of the First Information Report, as said above, does not disclose commission of offence either in part or in full or in continuation at Lucknow. The proper and ordinary venue for the trial of a case crime of the area is the jurisdiction in which, on the evidence, the facts occur, and which are alleged to constitute the crime. Deepti Yadav in her eleven pages long F.I.R. has not stated even at a single place that Sanjeev Kumar Yadav or any members of his family either demanded dowry at Lucknow or assaulted the informant here or did any other offence within the territorial jurisdiction of the Lucknow Magisterial Court. It appears from the consolidated facts recited in the F.I.R. that Deepti Yadav stayed with her husband at Moradabad for short period of seven days only in August, 2004 and prior to that she either stayed with him at Sultanpur or in his native village home at Tadwa (Pilkichha) or at Gorakhpur. The occurrence of an attempt to administer acid allegedly took place only at Moradabad where she was also assaulted. In Sultanpur, where her husband was posted earlier, she was beaten once but she did not lodge any report either at the concerned police station at Sultanpur nor she complained to any higher authority of her husband. Also she did not write a letter to her parents about this inhuman treatment. Except Moradabad and Sultanpur, there is no other place where she might have been maltreated or assaulted. Out of the four places in picture, i.e., Tadwa, Gorakhpur, Sultanpur and Moradabad, she stayed for sometime in the native village of her husband, namely, Tadwa (Pilkichha), District Jaunpur and Gorakhpur. The F.I.R. is absolutely silent of any occurrence of assault or 'marpeet' at Tadwa or Gorakhpur. As said above, only two instances of 'marpeet' – one at Sultanpur and the other at Moradabad, have been quoted, but no such incident was referred to the duration of her stay at the remaining two places. The long silence on her part after the two occurrences at Moradabad and Sultanpur clearly shows that they are concocted, manufactured with malice and ill-will in order to wreak vengeance with her husband, namely, Sanjeev Kumar Yadav and the most significant conclusion which would emerge is that not a single instance constituting an offence has taken place at Lucknow. We would therefore hold that by no stretch of reasoning the Court of Second Additional Chief Judicial Magistrate is competent to take cognizance of the matter. Therefore, in the result, the criminal proceedings initiated against the petitioners including Deepti's husband are liable to be quashed on the ground of lack of jurisdiction alone.

In other words, it may be observed that the allegations regarding 'marpeet' and attempt to administer acid are inherently improbable besides being absurd and therefore the F.I.R. and the criminal proceedings including charge-sheets deserve to be quashed.

The guideline No.7 as referred in Bhajan Lal's case (supra) provides that if 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, such criminal proceedings can be quashed. In this context, a reference to the allegations of the F.I.R. on the basis of which the entire investigation and the criminal proceedings are based would reveal that on occasions more than one, the dowry demand was made. Precisely, the various instances of the alleged dowry/gifts can be quoted in seriatim, as follows:-

- (1) Gift of a Maruti Zen Car and a Mahindra Marshal Jeep at the time of marriage;
- (2) Two sums of Rs.75,000/- and Rs.45,000/- given to Rajiv Kumar Yadav, the younger brother of Sanjeev Kumar Yadav by virtue of bank drafts;
- (3) Two sums of Rs.1 lac and Rs.50,000/- in the name of Sanjeev Kumar Yadav by way of bank drafts;
- (4) The gift of valuable items of domestic use valued at Rs.4 lacs;
- (5) Golden ornaments weighing from 45 to 55 'tolas' gifted to Sanjeev Kumar's relatives by the friends and relatives of Deepti Yadav;
- (6) A cash dowry of Rs.15 lacs and valuable items worth Rs.2 lacs given by the informant's father on two occasions of 'lagan' and 'tilak';
- (7) Rs.5 lacs demanded by Sanjeev Kumar at the time of his preparing for Indian Civil Service. The demand was allegedly met by the informant's father;
- (8) A demand of house in Lucknow with Rs.10 lacs in cash;
- (9) Reiteration of the demand of Rs.10 lacs by Motilal, the uncle of Sanjeev Kumar.

We will not scrutinize the above allegations of demand with a view to hold a trial here, while sitting in the jurisdiction under Article 226 and 227 of the Constitution of India as the same is not permissible but certainly we can make an analysis of these allegations with a view to come to a conclusion upon the petitioners' argument, that the entire criminal proceeding is manifestly attended with mala fide. To be specific and explicit in the scope of our discussion, we would like to mention that the contention of the learned Counsel for the petitioners is that the F.I.R. and the consequential criminal proceedings pending in the Court of Additional Chief Judicial Magistrate-II, Lucknow is maliciously instituted by Deepti Yadav with ulterior motive for wreaking vengeance on the petitioners and with a view to spite her husband Sanjeev Kumar Yadav due to private and personal grudge. We, therefore, proceed to make an analysis of the allegations of the complaint in order to examine the merit of the above argument.

At the very outset, it may be observed that the eleven long pages First Information Report which had resulted in launch of criminal proceedings against the petitioners is so well-worded and neatly woven that it does not leave any room for doubt that it is a well-deliberated draft by a legal expert. In fact, it needed to be quoted as a whole, but we do not consider it appropriate to do that because of lengthy versions. However, we will do that wherever we find it necessary to refer to the important parts thereof. If we look at the second page of the First Information Report (Annexure 1), it appears to indicate that the father of Deepti was enchanted by the P.C.S. Service cadre of Shri Sanjeev Kumar Yadav and their marriage was solemnized on 9th December, 1999 in Vishwas Khand, Gomti Nagar, Lucknow. It is relevant from the territorial jurisdiction point of view that in the entire First Information Report, it is not mentioned that either Sanjeev Kumar Yadav or his family members made any specific demand of dowry either in cash or in kind at Lucknow at the time of marriage or even thereafter. The third page of Annexure 1 further very specifically and with all modesty on the part of informant says that the informant's family members and relations according to their capabilities offered numerous gifts including a

Maruti Zen Car given on behalf of the informant's grandmother Smt. Sechna Devi and a Mahendra Marshal Jeep by the informant's father. What is of primary importance to note is that both these vehicles were the gift items as it is candidly clear from the recitations in the First Information Report which can be quoted as below:-

It is not disputed that the Mahendra Marshal Jeep is still in the name of the informant's father and the petitioners have denied their custody over it, although the allegation of the informant was that the said Jeep was being operated by her husband's father as a taxi. In other words, it is a property of the informant's father. The gift of Maruti Zen Car by the informant's grandmother is admittedly a gift and cannot be said to be a dowry item on demand. Had it been a demanded dowry, there was no question of its being given by the informant's grandmother and a candid admission on the part of the informant that her grandmother Sechna Devi gave it as a gift rules out the allegations that these vehicles were given on demand as dowry items. Not only the above quote of the First Information Report lends assurance to this conclusion but towards the end of the long drawn First Information Report also the above admissions on the part of the informant have been repeated. The last few lines at page 9 of Annexure 1 may be quoted as below:-

It is thus clear that both the vehicles/ornaments and valuable items of household utility and garments given at the time of marriage were all gift items. It would be a matter of debate as to whether these items offered as gifts to Sanjeev Kumar Yadav and his family members or relations would fall within the ambit of 'STRIDHAN' as a question, to invoke provisions of Section 6 of the Dowry Prohibition Act, would arise as to whether any list of such items was drawn as required by Section 3 of the Act. The answer being negative rules out the alleged claim. Moreover, in case of some items being permitted to be used will also have an impact of implied consent. The allegation of the Marshal Jeep being run as a taxi by the family members of Sanjeev Kumar Yadav has been categorically denied and the fact that the said Jeep is still in the name of the informant's father clearly points to the conclusion that Heera Lal alone is the registered owner of the said vehicle and he can, therefore, claim his custody over it.

As regards the household items of utility, such as Hero Honda Generator, Colour T.V. and other items of decoration valued at Rs.4 lacs, it may be mentioned that the informant has not asserted in its First Information Report that these items of four lacs were demanded by the petitioners or anyone else on their side much less Sanjeev Kumar Yadav. The allegation that Maruti Zen was purchased in the name of Dharm Raj prior to marriage under compelling circumstances stands thwarted on the face of the informant's allegation, in the earlier part of her report, that this was a gift item offered by Smt. Sechna Devi.

A gift cannot be a dowry as the dictionary meaning of gift is as follows :-

"a thing given willingly to someone without payment"

The position would however be different, if a gift is demanded at the time of marriage or prior or after the solemnization of marriage.

Contrary to the above, the term dowry appears to indicate as a property or money brought by a bride to her husband on their marriage.

Precisely, Section 2 defines dowry as follows :-

"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 ; or

(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 the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

Section 3 of the Act postulates as follows :-

"Penalty for giving or taking dowry - 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 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 any demand having been made in that behalf) : Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a 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 the 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."

The above quoted provisions of sections penalize dowry excluding the presents, i.e. gifts which are given at the time of marriage either to the bride or to the bridegroom - of course, such presents have to be entered in a list and they should also be customary in nature. The financial status of the giver will also be of primary importance and learned Counsel for the petitioners asked for a probe into the financial status of the informant's father who is a Government Servant. But we would not like to enter into that arena.

In the case in hand, the informant's father has not prepared any list of such items and as has been stated by the informant's husband, he is employed as a Junior Engineer in the Public Works Department U.P. who will certainly not be in a position to offer gifts and cash amounting to 30-40 lacs of rupees. All sums seem to be fantastic. The gift items like ornaments, colour T.V., Hero Honda Generator and valuable items of decoration are all customary. Although a vehicle is also acquiring these days the status of a customary gift item at the time of marriage, yet we will not enter into that debate here for the simple reason that the informant has herself termed both the vehicles and all dowry items as the gift items. Section 4 of the Dowry Prohibition Act provides for penalty only if there is a demand for dowry. If gift items, though technically may fall in the category of dowry, are offered without demand, there is no offence.

Therefore, these gift items will not be called as demanded dowry in view of the provisions of the Section 3(b) of the Dowry Prohibition Act. As regards the cash, it may be observed that the informant's father had allegedly given a sum of Rs.15 lacs at the time of 'tilak' and Rs.5 lacs at the time when Sanjeev Kumar Yadav was preparing for the Central Civil Services. Being conscious of the fact that this Court must not weigh the evidence so as to find out the veracity over the factual allegations, yet since we are convinced from careful perusal of the First Information Report that the entire story is a cock and bull story as regards dowry demand, we are giving the reasonings pertaining to allegations based on spite and vengeance which is sought to be wreaked upon Sanjeev Kumar and his family members at the hands of the informant and her father. Peeping from that angle into the allegations of the First Information Report, we would express our dismay that Sanjeev Kumar Yadav allegedly was paid Rs.1 lac and Rs.50,000/- by way of drafts prior to marriage but the same mode of payment was not observed by Shri Heera Lal, the informant's father while handing over a hefty sum of Rs.15 lacs - which perhaps may not be his entire savings of his salaried service unless there is some other source of income.

Not only this, but he again gave Rs.5 lacs without any bank draft or cheque and this amount was given at the time, when Sanjeev Kumar had allegedly stopped visiting his wife and a small kid living at Lucknow in desertion. Similarly, the demand of Rs.10 lacs in 2004 appears to be a fabricated story just to express her spite and retaliate of Sanjeev's act having lost his interest in the informant. It is astonishing that the informant and her kid had never been looked after the informant delivered the child, yet a simple demand of Rs.5 lacs had been very promptly carried out by the informant's father, when he was preparing for the Central Civil Services competitive examination. Sanjeev Kumar Yadav allegedly got the informant sent to her parents' house at Vishwas Khand, Lucknow, yet her father was benevolent enough to give a huge sum of Rs.5 lacs to his son-in-law and we would note with further surprise that this entire amount had been borrowed by the informant's father from his well-wishers (not relatives) with a view to buy peace and pleasure for his daughter and paid to her husband. Neither bank cheque nor draft was used as a mode of payment, although a sum of Rs.15 lacs was paid by draft before marriage. When the informant's father tried to ascertain the reason of Sanjeev Kumar Yadav being indifferent to his wife, he came to learn that Sanjeev had become greedy after being selected in the Central Civil Services and his greed has acquired dimensions to the extent that he wanted to contract another marriage and earn Rs.1 crore as dowry. In this context, a reference was also made to his conduct that he had shown himself to be 'single' in Lal Bahadur Shastri National Academy's record, but Sanjeev Kumar controverted such an allegation by filing a Certificate-cum-letter indicating therein his status as 'married'. The letter of Shri J.B. Saini, Administrative Officer (Establishment) dated 7th February, 2005 enclosed as Annexure No.SA1 to the Supplementary Affidavit dated 1st December, 2005 of Sanjeev Kumar clearly recites that in the Descriptive Roll of Academy Sanjeev is recorded as 'married'. Maybe that somewhere advertently or inadvertently he might have written himself single but that does not falsify Mr. Saini's letter certifying Sanjeev Kumar Yadav as 'married'.

The common experience shows that most of the cases of differences and dissensions between married couples result only in dowry demand by the husband and by all his family members.

The provisions of the Act are being callously misused by the wives and their parents with different kinds of stories. The disputes, though pending in the Courts for decisions, still give rise to the complaints and F.I.Rs of the wives' victimization of dowry demand. So long the status of the husband is enchanting, as was the case in hand with the informant's own allegation that her

father was mesmerized with the status of Sanjeev Kumar - presents and gifts comprising colour T.V., generator sets, maruti cars or even that of better brand, houses, cash - are offered to grab over the bridegroom. He is forced to be attracted of all allurements of huge cash and numerous gifts of household utility, but with the disruption of ties between the husband and wife or slight dissensions on account of their colliding temperaments, strained relationship of the wife with her parents-in-law, difference in the culture of the two families of wife and husband, distances of the education between the two including the difference of mental levels, and extra-marital relationship of either of the two spouses - everything is channelized into a dowry tunnel and the wife is said to be victimized of the dowry demand.

'Draft a qualitative and capturing or a pathetic story of dowry victimization and harass the husband' has become the routine of warring couples. As said above, the husband and wife relationship may become strained on not one but on various issues as enumerated above, the allegation of demand of dowry is the eventual result in ninety nine percent of the hundred cases.

Having regard to all these aspects of the matter, we would like to record a finding that the allegation of demand of Rs.10 lacs is a fabricated story of the informant and her father with a view to teach a lesson to the husband, namely, Sanjeev Kumar Yadav, who if arrested will immediately be placed under suspension and with a view to force to realize him as to how then the miserable life of an officer of Indian Revenue Service will commence in and out of jail.

The sole purpose of a novel like story evolved by the informant and recited in her First Information Report is to take a revenge with him by getting him sent to jail and further placing him in sufferings with his eventual suspension. The Courts are to protect the valuable rights of not only a wife if she is victimized and maltreated with dowry demand but also a harassed husband who is also equal in the eyes of law and if a concocted attempt as the one in hand is made to place the husband in an awkward situation, certainly the Court must come to the rescue of such a husband in humiliation. If the dispute between the husband and wife hinges or surrounds elsewhere, the provisions of the Dowry Prohibition Act must not be misused. In the case in hand, as is the allegation of the informant, infidelity seems to be the crux of the differences between her and her husband. She alleged that her husband Sanjeev Kumar Yadav had developed illicit relationship with Km. Neelam Srivastava and as she has now gathered information, he was all adamant to marry her. The informant was aggrieved of the alleged love affair going on between her husband and Neelam Srivastava and it was in the same sequence of events that the informant alleged about the frequent visits of Sanjeev Kumar Yadav to Jaunpur where Neelam Srivastava was conveniently available. Neelam Srivastava is unmarried and posted as Assistant Consolidation Officer at Varanasi and she has her house in Jaunpur. The allegation of Sanjeev's proposal to marry her is in clear conflict with the informant's allegation that he had desired to marry someone and acquired a dowry of Rs.1 crore. An Assistant Consolidation Officer cannot fetch him that fantastic amount nor she would be able to provide a palatial house in Lucknow. Sanjeev Kumar Yadav has denied the informant's allegation of infidelity attributed to him vis-.-vis Km. Neelam Srivastava and said that she is a pious girl.

We are not concerned as to what is the status of Ms. Neelam Srivastava nor we are concerned as to what is her relationship with the informant's husband. What we are concerned with is that the ground of infidelity against a husband must not be misused with an accusation of dowry demand. If Sanjeev Kumar is guilty of the offence of extra-martial relationship, he should be penalized, but in accordance with law. She must file a complaint in the Court of competent

jurisdiction alleging a charge of adultery and the law will take its own course. But she cannot be permitted to misutilize and abuse the provisions of the Dowry Prohibition Act and harass her husband by getting him arrested and suspended from his service. True that if the dowry demand is made by him he would be liable for a severe penalty but the informant was not expected to imagine and fabricate a fantastic story of giving dowry in the shape of presents and gifts worth Rs.30-35 lacs without demand at the time of marriage and after the differences broke between the two, then accuse him of making demand for more dowry and get, the entire family comprising dozens of persons including young and unmarried sisters, husbands of the married sisters sent to jail. The informant in her First Information Report expected the human values and courtesies to be expected of Sanjeev Kumar Yadav, but on her own part every such human value went in oblivion when the two unmarried sisters Jaya and Usha, cousin Santosh were framed in this case and got them arrested by police. It is unbelievable on the face of the First Information Report that the unmarried sisters of Sanjeev Kumar Yadav and husbands of his married sisters living away would exert their pressure for dowry demand. Sri Yadav right from very beginning was nicely placed initially in U.P. Provincial Services and then in Central Civil Service. He and his parents would well be said to press for dowry and harass the informant when she failed to fulfil it. The husbands of the married sisters, brothers-in-law, uncle and cousin might not have been invited to associate.

As has also been argued before this Court and pleaded in the petition and also recited in the regular Civil Suit seeking a decree for judicial separation, the informant wanted her husband not to give even the slightest part of his salary to his parents - a cherished desire of every wife. A perusal of para 7 of the plaint of the Regular Suit (Annexure 2) reveals that the informant herself started misbehaving with all members of the plaintiff's family and also threatened to get all of them falsely implicated in the case of dowry demand. It seems to be obvious that she implemented her threats of getting Sanjeev Kumar and his family members framed in a case of dowry demand by getting the F.I.R. in question lodged. It was pleaded further by Sanjeev Kumar Yadav in his plaint that while leaving his place in and around October, 2001, the informant carried the entire jewellery and all her garments and while leaving, threatened everyone in the family to snap her ties with all of them and thereafter she never came back to stay with him. As said earlier, the suit for judicial separation was filed on 3rd September, 2004, i.e. about five months before the F.I.R. was lodged. The petitioners' contention is that the F.I.R. was nothing but a retaliatory action of the informant after she came to learn about the said suit being instituted. In this way, the petitioners' contention that the informant swung into action with a view to take revenge by fabricating a cock and bull but attractive story, appears to be sustainable.

Mr. B.M. Sahai, learned Counsel for the informant further pressed into service his argument that since an alternative remedy of filing a petition under Section 482 Cr.P.C. for challenging the criminal proceedings pending in the Court of Additional Chief Judicial Magistrate-II, Lucknow is available to the petitioners, this writ petition should be dismissed. In support of his contention, learned Counsel relied upon various citations. The first such decision of the Apex Court is in 'Basant Kumar v. Eagle Rolling Mills [AIR 1964 Supreme Court 1260]'. It was held in this case that when a different forum of Industrial Tribunal could be approached by the appellant whose medical benefits were curtailed, a petition under Article 226 of the Constitution would not be maintainable.

This citation is not attracted towards the facts of the present case, where the petition for quashing of the F.I.R. was legally maintainable under Article 226 of the Constitution. During the

pendency of the petition, charge-sheets were filed and the cognizance had been taken.

The Hon'ble Supreme Court in Pepsi Food's case (supra) has held that in such a circumstance, the petition can be treated as one under Article 227 or even Section 482 Cr.P.C. and the alternative remedy of filing an appeal or a revision will not operate as a bar to decide a petition originally filed under Article 226 of the Constitution. On the basis of the principle of law laid down in the decision by the Hon'ble Apex Court, the citations reported in 1993 JIC 151, AIR 1993 SC 892, 1999 (1) JIC 883 (All.), 2001 (1) JIC 597 (All.) are not applicable to the facts and circumstances of the present case. It was held in the famous case of Rupan Delol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194] that a prima facie case was made out against the writ petitioner Shri Gill and there was sufficient evidence to proceed with, therefore, the FIR lodged by Mrs. Bajaj and the complaint filed by her husband were liable to be proceeded with further by the trial Court. The respondent in that case by slapping on the back of the informant was stated to have committed an offence of outraging her modesty. We do not find even an iota of similarity between the two cases and therefore, we hold that the said decision is of no avail to the informant.

The citation 'State of Bihar v. Rajendra Agrawalla [1996 JIC 363 (SC)]' is also distinguishable from the facts of the present case. As in that case, a petition under Section 482 Cr.P.C. was filed by the petitioner who was a Sub-Inspector of Police. The High Court quashed the criminal proceedings but the Hon'ble Supreme Court held that there was sufficient evidence to constitute commission of an offence under Section 414 I.P.C. It was also held in that case that a criminal proceeding can be interfered with by the High Court under Section 482 Cr.P.C. only if it is shown that the complaint together with the other material collected during investigation taken at their face value do not constitute the offences alleged. In that case, there was recovery of huge stock of pieces of the track trolley used in BCCL and since the respondents could not show any document to prove their ownership, it was held that they were rightly challaned by the police. In the case in hand, the facts are not as categorical. Neither there was any recovery nor the demand of dowry is believable.

Learned Counsel for the informant then referred to a citation of this Court *Devi Sahai and others v. State of U.P. and others* [2001 (1) JIC 597 (All)] and contended with reference to it that an application under Section 482 Cr.P.C. for quashing of the F.I.R. pending investigation is not maintainable. In that case, 482 Cr.P.C. petition was filed for quashing of the F.I.R. on the ground that the F.I.R. was totally false and concocted and had been lodged to wreak vengeance on account of election enmity. We could not appreciate as to how this could have helped the informant because the petitioners of the case in hand filed a writ petition under Article 226 of the Constitution and not a 482 Cr.P.C. petition. It is however different that with the development of the charge-sheets having been submitted, this petition has been treated to be as one under Article 227 and under Section 482 Cr.P.C. in view of the Apex Court's decision in Pepsi Food's case (supra).

Learned Counsel for the informant then relied upon the citation '*Sadhana Lodh v. National Insurance Company and another* [2003 (3) SCC 524]'. With reference to this decision, it has been submitted that where an alternative remedy of filing appeal is available, interference under Articles 226 and 227 is not permissible. In that case, in a motor accident claim, an award of Rs.3.5 lac as compensation was pronounced. The aggrieved insurer filed a petition under Articles 226 and 227 of the Constitution which was allowed by the High Court and the amount of award was reduced. The Hon'ble Supreme Court held that since an alternative remedy of filing

an appeal was available to the insurer, filing of a petition under Articles 226 and 227 of the Constitution or interference in any manner was not permissible under law. Obviously, the facts of the case are entirely different from the one before us, therefore, the citation is not attracted towards this case.

For the reason that in the decision *Ram Lal Yadava v. State of U.P. and others* [1989 ACC 181], the petition was filed under Section 482 Cr.P.C. to stay the arrest of an accused during investigation, the said decision of this Court does not help in any manner. It was precisely held by this Court in that case that during investigation arrest of an accused cannot be stayed under Section 482 Cr.P.C. by the High Court while exercising its inherent power. Any repetition is unpleasant but since relevant decisions are not being referred to, we have to observe again and again that the petition in hand was initially filed under Article 226 of the Constitution and for the reasons disclosed earlier and in view of the principle of law laid down in the case of *Pepsi Foods Ltd. (supra)*, we have treated it to have also been filed under Article 227 of the Constitution and Section 482 Cr.P.C. It is however significant to note that in this very decision (*Ram Lal's case*), a full bench comprising seven Hon'ble Judges clearly postulated in para 22 of the Judgment that if the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or mala fide in violation of Section 41(1)(a) Cr.P.C. the High Court can also issue a writ of Mandamus under Article 226 of the Constitution restraining the police officer from misusing the power and it is for this principle of law ruled by the Full

Bench that Dr.

L.P. Misra learned Counsel for the Petitioners too cited this decision and placed reliance thereupon. Dr. L.P. Misra further submitted with reference to a decision in *Common Cause, a Registered Society v. Union of India and others* [1999 Vol.VI SCC 667] that powers of a High Court under Article 226 and the Hon'ble Supreme Court under Article 32 are plenary in nature and in exercise of such plenary powers, Court can rectify even its own mistakes. Although there is no case in hand of rectifying an error, yet emphasis has been laid by the learned Counsel that under Article 226 a High Court can exercise plenary power to do complete justice.

Dr. L.P. Misra then contended with reference to another decision of the Apex Court in *Secretary, O.N.G.C. Ltd. and another v. V.U. Warriar* [(2005) 5 SCC 245] that jurisdiction of the High Court under Article 226 is equitable and discretionary and it can exercise this power to reach injustice wherever it is found.

The sum and substance of the discussions made above is that the facts of this case being peculiar with the developments during investigation are such that this Court would consider it equitable to interfere and quash the entire criminal proceedings pending against the petitioners.

Learned Counsel for the informant vehemently argued that since Sanjeev Kumar Yadav did not surrender before the Court following cancellation of his bail, no discretionary relief should be extended to him. In this context, it may be significant to note that when after his arrest, he was brought to Gomti Nagar Police Station, the Station House Officer released him on bail on the ground of his illness and all other petitioners arrested from Jaunpur were sent to jail. The bail of Sanjeev Kumar Yadav was cancelled on technical ground that since he was on transit remand, he could not have been released on bail. Subsequently, this Court vide its Order of 28th July, 2005 stayed his arrest on the merit of his plea that the F.I.R. on the face of it carried a concocted version. However, on September 9, 2005 the said interim order was vacated. He

then moved an application soon thereafter for modification of the order which was finally heard alongwith the writ petition. It may be relevant to observe that Sanjeev Kumar Yadav approached this Court for redressal of his grievance and since right from very inception of his having filed this petition, his case was that he has been falsely framed in this case by the informant after concocting a case of dowry demand out of sheer vengeance, he was justified in his right to seek a modification of the order by bringing before the Court all the relevant facts and circumstances. Every citizen has a right to approach this Court not once but many a times and the facts and circumstances on the basis of which a prayer for modification of the vacation order was made would all be very relevant and significant to be looked into. Once it has come to the notice of the Court that indeed his stand about the First Information Report being based on retaliatory measure is acceptable, he cannot be penalized merely because he moved an application for modification of the vacation order instead of surrendering himself before the Court for going to jail.

Learned Counsel for the petitioners has also assailed the charge-sheets – one submitted on February 21, 2005 and the other on October 25, 2005 (perhaps the same charge-sheet submitted twice). The fact regarding submission of the charge-sheet on 21.2.2005 is falsified by the Order dated 1st March, 2005 by the Senior Superintendent of Police, Lucknow whereby he had transferred the investigation of this case from S.I. Shri K.K. Sharma to S.I. Shri Brij Kishore Singh. The very fact that the investigation was transferred from Shri K.K. Sharma to Shri Brij Kishore Singh on 1st March, 2005 prima facie proves that there was some manipulation somewhere in Shri K.K. Sharma's statement and conduct of his having submitted charge-sheet on 21st February, 2005.

Deepti Yadav filed a copy of the charge-sheet alongwith her supplementary affidavit dated 2nd December, 2005. A perusal of this charge-sheet appears to indicate that it was signed by Shri K.K. Sharma on some date in February, 2005 but the figures of the date were interpolated and in their place, 21.2.2005 was substituted. Cognizance of this charge-sheet had been taken on October 25, 2005. The charge-sheet dated 21.2.2005 with changed figures of date has been termed to be of 25.10.2005 by Deepti Yadav in her supplementary affidavit of December 2, 2005.

Virtually, it seems to be the same charge-sheet submitted twice. The Presiding Officer in his Order dated 25th October, 2005 says it had been received on 25th October, 2005. There is manipulation in the figures of the date underneath the signature of the Second Additional Chief Judicial Magistrate also. In the figures of '10' meant for the month of October, figure '3' is clearly visible within the circle of '0' which clearly indicates that the Investigating Officer has committed some significant errors in changing the date under his signatures. The Presiding Officer also seems to have towed the same line and did some alienation in the figures of date underneath his signature. Further, the Investigating Officer appears to have added Section 307 I.P.C. possibly by replacing the letters I.P.C. The interpolations are clearly visible in the headline of the charge-sheet as well as in his brief note spreading over columns 5 to 9 in the charge-sheet. A copy of the order is enclosed with the charge-sheet and a perusal of the said order dated 25.10.2005 appears to indicate that cognizance was taken by the learned Second Additional Chief Judicial Magistrate. From bare perusal, it appears that the learned Second Additional Chief Judicial Magistrate has not applied his mind while taking cognizance of the matter. It is simply recited in the order at the relevant place that the F.I.R. has been perused, which is enough for taking cognizance, therefore, cognizance is taken. Precisely, the order may be quoted as below:-

“vkt fnukad 25-10-2005 dks vla0 14@05 /kkjk
498d@323@504@ 506@511 @307 n0iz0la0 o 3@4@6 ngst
vf/k0 es vkjksi i= vfHk;qDrxu latho dqekj ;kno] jktho dqekj
;kno] /keZjkt ;kno] eksrhyky ;kno] lUrks”k dqekj ;kno] Jherh
lj;wnsoh] Jherh ‘kksHkkorh] Jherh jatuk] dq0 m”kk] dq0 t;k]
Jherh vk’kk o n;kjke ds fo:) vkjkasi i= izklr gqvk A voyksdu fd;k
x;k x;k laKku ysus gsrq vk/kkj i;kZlr gS A laKku fy;k tkrk gS A
eqdnek ntZ jftLVj gksssa
vkns’k
i=koyh fnukad 28-10-2005 dks is’k gks A”

It is apparent from perusal of the aforesaid order that the learned Second Additional Chief Judicial Magistrate has not examined the facts and evidence of the case. Mere recital about the perusal of the charge-sheet does not indicate about sufficient reasoning for taking cognizance. It is not mentioned that the documentary evidence including the F.I.R. or the statements of the witnesses or any other piece of evidence was or was not perused by the learned Second Additional Chief Judicial Magistrate. The Order has been passed in a mechanical manner without applying mind to the facts of the case and evidence submitted in support of the charge-sheet. Had the Presiding Officer scrutinized the F.I.R. even, he would have learnt that no offence had taken place in the territorial jurisdiction of Lucknow-district. Apart above, it has also not been explained on behalf of the informant that as to how the Senior Superintendent of Police ordered for transfer of the investigation when charge-sheet has already been submitted and as to why the Senior Superintendent of Police disclosed before the Court in Criminal Misc. Case No. 1026 of 2005 that no charge-sheet had been filed till 1st March, 2005, i.e. the date on which the investigation was transferred from Shri K.K. Sharma to Shri Brij Kishore Singh.

From these manipulations also mala fide on the part of the Investigating Officer stands proved.

In view of the above discussed manipulations and non-application of mind by the learned Second Additional Chief Judicial Magistrate, the criminal proceedings stand vitiated and deserve to be quashed.

For the reasons disclosed above, our conclusions may in brief be recapitulated below :-

The Writ Petition filed initially under Article 226 of the Constitution of India is treated to be as the one under Article 227 of the Constitution of India and Section 482 Cr.P.C. in view of the Apex Court’s decision in Pepsi Food’s case (supra). The First Information Report was filed by Deepti Yadav with a view to wreak vengeance upon her husband Shri Sanjeev Kumar Yadav and his family members.

The First Information Report came into being as a retaliatory move to teach him and his family members a lesson of filing a suit for judicial separation on September 3, 2004. The First Information Report was a sequel to the informant’s suspicion of infidelity against her husband.

The presents and gifts offered at the time of marriage to Sanjeev Kumar and his family members were gifts offered by the informant’s parents, grandmother and other relatives on their own. Such presents and gifts do not fall within the category of ‘dowry demanded’.

It is falsified that either Sanjeev Kumar or any other member of his family demanded any dowry.

The Investigating Officer acted in a mala fide way and manipulated things to mislead the Court of the II Additional Chief Judicial Magistrate as also this Court by making manipulations in the charge-sheet as discussed above. Learned Additional Chief Judicial Magistrate-II has without application of mind proceeded to take cognizance of the offences and thereby committed a serious illegality.

The above Magisterial Court at Lucknow has no territorial jurisdiction to deal with the offences alleged to have been committed in Tadwa (Pilkichha), District Jaunpur, Sultanpur, Gorakhpur and Moradabad.

The First Information Report is a well-drafted document based on spite and animosity.

In view of the foregoing conclusions, we are of the decisive view that the First Information Report (Annexure 1) as well as the criminal proceedings pending against the petitioners in the Court of Additional Chief Judicial Magistrate-II, Lucknow are liable to be quashed.

Accordingly, the writ petition is allowed and the First Information Report as also the criminal proceedings including the charge-sheet(s) dated 21st February, 2005/25th October, 2005 are hereby quashed.

A writ of Certiorari is issued accordingly.

January 10, 2006

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