

(A.F.R.)

Reserved on 20.01.2020

(In Court No.11)

Delivered on 16.04.2020

Case :- U/S 482/378/407 No. - 3716 of 2010

Applicant :- Smt. Anshu Goel And Another

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Saurabh Mishra

Counsel for Opposite Party :- Govt. Advocate, Manish Kumar
II

Hon'ble Sudhir Agarwal,J.

1. This is an application under Section 482 of Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) filed by two applicants Smt. Anshu Goel and Sri Ambhuj Goel, both are husband and wife, with a prayer to quash charge-sheet no.38 of 2010 dated 31.03.2010 in Case Crime No.51 of 2010 dated 17.02.2010 and to quash order dated 22.04.2010 passed by Additional Chief Judicial Magistrate IIIrd, Lucknow taking cognizance, issuing process and registering as Case No.1908 of 2010, under Sections 498-A, 427, 506 IPC read with Sections 3/4 of Dowry Prohibition Act, 1961 (*hereinafter referred to as "Act, 1961"*) and the entire criminal proceedings therein.

2. The First Information Report (*hereinafter referred to as "FIR"*) was lodged by OP-2 (*hereinafter referred to as "OP-2"*) Smt. Garima Goel, who is wife of Rohit Agarwal and daughter of Gopal Krishna Goel, against accused Rohit Agarwal (husband), Dinesh Chandra Agarwal (father-in-law), Smt. Manjul Agarwal (mother-in-law), Smt. Anshu Goel (sister-in-law i.e. *Nanand*) and Sri Ambhuj Goel (brother-in-law i.e. *Nandoi*) at Police Station Vikas Nagar, Lucknow registering as Case Crime No.51 of 2010 dated 17.02.2010, under Sections 498-A, 427, 506 IPC read with Sections 3/4 of Act, 1961.

FIR version actually contained is a copy of complaint made by OP-2 to Director General of Police, U.P. Lucknow (*hereinafter referred to as "D.G.P., U.P."*) and the allegations contained therein are as under:-

“निवेदन है कि मेरी शादी दिनांक 17.2.2009 को रोहित अग्रवाल पुत्र श्री दिनेश चन्द्र अग्रवाल निवासी ए-003 ब्लैक गोल्ड अपार्टमेंट (सीनियर सिटीजन सोसाइटी) ओमेगा-2 पाकेट यू0पी0-02 ग्रेटर नोएडा, गौतम बुद्ध नगर के साथ मंगलम गेस्ट हाउस सी-784 सिला नगर लखनऊ से सम्पन्न हुई थी। दिनांक 18.2.09 को विदा होकर मैं अपने ससुराल ग्रेटर नोएडा आ गई। शादी के बाद से ही मेरे ससुर मेरी सास मंजुल अग्रवाल, ननद श्रीमती अंशु गोयल, ननदोई श्री अम्बुज गोयल, निवासी *Suswee Apartment Flat No.8, 15 Main Road, 17 J.P.Nagar Phase 75 Bangalore* का ठीक नहीं रहा। परम्परा के अनुसार लड़की की पहली होली मैके में होती है लेकिन मेरे सास ससुर एवं मेरे पति ने मुझे होली में घर नहीं जाने दिया, जबकि मेरे पिता ने मेरे भाई गौरव एवं बहन गुंजन को मुझे लेने के लिए ग्रेटर नोएडा भेजा था तथा दिनांक 10.03.09 को मेरा *Reservation* मेरे पिता जी ने लखनऊ के लिए कराकर भेजा था शादी के बाद से ही ये लोग मुझे घर वालों से फोन से बात नहीं करने देते थे तथा मेरे घर से फोन आता था तो ये लोग मझे बताते नहीं थे या फिर किसी बहाने से घर वालों को टाल देते थे या काट देते थे। मेरे पापा ने जो मोबाइल मय सिम के फोन दिया था उसका स्विच आफ करवाकर मेरी सास ने रखवा दिया तथा एक दिन रोहित ने मेरी सास के कहने पर फोन का सिम व बैटरी निकाल कर फोन पटक कर तोड़ दिया। शादी के दूसरे दिन ही मेरी सास ने मैके से मिले सभी गहने व उनके द्वारा दिये गये गहने उतरवा लिये थे। मेरे ननद अंशु गोयल कहती थी कि मेरे भाई की शादी 15 लाख की थी मेरे नन्दोई श्री अम्बुज गोयल ने कहा कि मेरी रोक में 10 ग्राम की सोने की गिन्नी मिली थी परन्तु तुम्हारे पापा ने तो केवल 5 ग्राम की गिन्नी दी। मेरे ससुर मुझसे कहते थे कि तुमने और तुम्हारे पिता जी ने डिग्री पीछे से ली है, ऐसी शादी तो फोर्थ क्लास इम्पलाई भी नहीं करता है, जैसी शादी तुम्हारे पापा ने की है, हमारे यहा फोर्थ क्लास इम्पलाई भी साइकिल, मोटर साइकिल देते हैं, तुम्हारे पापा कैसे *Joint Director* हैं जो गाडी क्या गाडी का पहिया भी नहीं दिया। एक बार फ्रीजर का ढक्कन टूट गया तो मेरी सास ने कहा कि एक तो फ्रिज नहीं लाई तथा मेरा फ्रिज भी तोड़ दिया। इस प्रकार ये सभी लोग मेरी लम्बाई कद काठी व रंग को लेकर अक्सर व्यंग व कटाक्ष किया करते थे, जबकि इन लोगों ने मुझे देखकर व पसन्द कर के शादी की थी, लेकिन इन्हे मेरे पापा से कार एवं दहेज की काफी

उम्मीद थी जो न पूरी होने पर ये उत्पीड़न करने का कोई मौका नहीं चूकते थे। इन लोगों ने मुझे शादी के बाद से 5 महीने तक, मां बाप, भाई, बहन के साथ कुछ दिन तक रहने के लिए नहीं भेजा तथा हमेशा इनका प्रयास रहा कि मेरी बात मेरे मैके वाले से न होने पाये। मैं July माह से अपने मैके में हूँ लेकिन ये सभी लोग मुझे विदा कराने नहीं आ रहे हैं। शादी के दिन ही सुबह मेरे नन्दोई ने रु0 5539/- की पर्ची दी एवं मेरे ससुर ने रु0 47391/- का चेक लिया। मेरे पिता जी ने 55000/- नगद मेरे नन्दोई को दे दिया, ऐ चेक चि0 रोहित अग्रवाल के नाम का इन लोगों ने लिया *Cheque No. 04110 HSBC Lko* का है जो कि दिनांक 22.2.09 को मेरे पापा के खाते से खारिज हुआ। (55391-00 की पर्ची की फोटो कापी, एवं पापा के A/C से खारिज रोहित अग्रवाल के नाम से उपरोक्त *Cheque* के *Statement* की फोटो प्रति संलग्न है)

अतः मेरा निवेदन है कि उपरोक्त की प्रथम सूचना रिपोर्ट करवाकर कार्यवाही करने की कृपा करें।”

3. Police after making investigation, submitted charge-sheet no.38 of 2010 dated 31.03.2010. Thereupon Magistrate took cognizance and issued process by summoning applicants and other three accused as named above vide order dated 22.07.2010.

4. It is further pleaded by applicants that a divorce petition dated 14.01.2010 under Section 13 of Hindu Marriage Act, 1955 (*hereinafter referred to as “Act, 1955”*) was also filed by Rohit Agarwal, husband of OP-2, in the Court of Civil Judge (Senior Division), Gautambudh Nagar which was presented in the Court on 24.02.2010. In order to harass applicants, OP-2 subsequently filed aforesaid report on the basis of false and incorrect facts, hence, entire proceedings are malicious and liable to be set aside.

5. Learned counsel for applicants submitted that applicants are brother-in-law i.e. *Nandoi* and sister-in-law i.e. *Nanand* of OP-2. They are not residing with other accused persons since after marriage of applicant-1 with applicant-2. They are residing at Bangalore. Allegations levelled against applicants are patently false. It is said that

applicant-2 Ambhuj Goel is a software engineer working at HCL Technologies, Bangalore since March, 2009 and stayed there till 12.07.2009. In FIR itself, address of husband of OP-2 and her father and mother-in-law have been given as A-003 Black Gold Apartment (Senior Citizen Society) Omega-2 Pocket U.P.-02, Greater Noida, Gautambudh Nagar and address of applicants has been given as Suswee Apartment, Flat No.8, 15 Main Road, 17 J.P. Nagar, Phase-5, Bangalore which shows that applicants were residing at a different place, hence, there was no occasion on their part to harass and commit cruelty or torture upon OP-2 as stated in the FIR and the entire proceedings are vitiated in law and wholly malicious.

6. It is further said that the only allegations made against applicants are that applicant-1 used to comment that in the marriage of her brother, 15 lakhs were settled and applicant-2 used to comment that he got 10 gram gold coin but father of OP-2 gave a gold coin of only 5 gram. There is no allegation so as to attract offences under Sections 498-A, 427, 506 IPC read with Sections 3/4 of Act, 1961 and, hence, entire proceedings are vitiated in law, malicious, illegal and liable to be set aside. Sri Saurabh Mishra, Advocate appearing on behalf of applicants, in support of his submission, has placed reliance on the judgements of Supreme Court in **Ramesh and Others Vs. State of Tamil Nadu 2005 Cr.L.J. 1732**; **U. Suvetha Vs. State by Inspector of Police and Another (2009) Cri.L.J. 2974**; **Preeti Gupta and Another Vs. State of Jharkhand and Another 2010 AIR SCW 4975** and **Geeta Mehrotra and Another Vs. State of U.P. and Another AIR 2013 (SC) 181**. He has also relied on certain judgements rendered by Single Judges of different High Courts in **Smt. Rani and Another Vs. State of U.P. and Another 2010 (7) ADJ 72 (Ald.)**; Patna High Court's decision in **Sunil Kumar Singh and Another Vs. State of Bihar and Another 2006 Cr.L.J. 3527 (Patna)**; Rajasthan High Court's decision in **Khuman Chand Vs. State of**

Rajasthan 1998 Cr.L.J. 1670; Delhi High Court's decision in **Savitri Devi Vs. Ramesh Chand and Others 2003 Cr.L.J. 2759** and Punjab and Haryana High Court's decision in **Lakhwinder Singh Vs. State of Punjab 2000 Cr.L.J. 4751.**

7. Besides, applicants have also filed a Misc. Application with a request to accept on record judgement dated 05.02.2016 passed by Sri Suresh Chand, IVth Family Judge, Family Court, Lucknow in Matrimonial Suit No.0001077 of 2013, Rohit Agarwal Vs. Smt. Garima Goel passing a decree of divorce under Section 13 of Act, 1955; and, order dated 28.08.2019 passed in First Appeal No. 20 of 2016, Smt. Garima Goel Vs. Principal Judge Family Court Lucknow and Another to show that judgement of Principal Judge Family Court is pending in appeal before this Court.

8. Sri Manish Kumar II, learned counsel for OP-2 has contended that charge-sheet has been submitted by police after making investigation and collecting evidence during investigation and on that basis cognizance has been taken by Magistrate. At this stage, defence of accused persons and their evidence neither was before Court below nor in the proceedings under Section 482 Cr.P.C., such defence of accused persons can be looked into by this Court and, therefore, it cannot be said that there is no evidence whatsoever and proceedings are malicious which again is a question of fact and can be decided after evidence is adduced before Trial Court, hence, no interference under Section 482 Cr.P.C. is justified in the present case.

9. Learned AGA appearing on behalf of State supports and adopts the arguments of learned counsel for Informant/OP-2.

10. In the present case, stage at which applicants have come before this Court is when charge-sheet was submitted by police after investigation and thereupon Magistrate took cognizance and issued process summoning accused applicants along with three accused persons for trial for the offence under Sections 498-A, 427, 506 IPC

read with Sections 3/4 of Act, 1961. Admittedly, no evidence has been recorded by Trial Court at the stage when applicants have come to this Court to challenge charge-sheet, order of cognizance and process.

11. Scope of judicial review at this stage to interfere under Section 482 Cr.P.C. is very limited. If allegations contained in FIR taken to be true, and evidence collected by police is looked into, can it be said that offences under aforesaid Sections in respect whereof cognizance has been taken and process has been issued, are not made out only the Court would interfere otherwise not. Scope of judicial review in such matters has been laid down by Supreme Court time and again and it would be fruitful to have a retrospect of some authorities on the subject.

12. At the stage of charge sheet factual query and assessment of defence evidence is beyond purview of scrutiny under Section 482 Cr.P.C. The allegations being factual in nature can be decided only subject to evidence. In view of settled legal proposition, no findings can be recorded about veracity of allegations at this juncture in absence of evidence. Supreme Court has highlighted that jurisdiction under Section 482 Cr.P.C. be sparingly/rarely invoked with complete circumspection and caution. In **Md. Allauddin Khan Vs. The State of Bihar & Others 2019 (6) SCC 107**, Supreme Court observed as to what should be examined by High Court in an application under Section 482 Cr.P.C. and in paras 15, 16 and 17 said as under :

“15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie

case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

16. *The second error is that the High Court in para 6 held that there are contradictions in the statements of the witnesses on the point of occurrence.*

17. *In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short “Cr.P.C.”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.”*

(emphasis added)

13. Recently, above view has been reiterated by Supreme Court in **Criminal Appeal No.175 of 2020 (State of Madhya Pradesh Vs. Yogendra Singh Jadaun and another)** decided vide judgment dated 31.01.2020.

14. The principles which justify interference by Court under Section 482 Cr.P.C. have been laid down in various authorities in which Supreme Court's judgment in **State of Haryana vs. Bhajan Lal and others**, 1992 Supp (1) SCC 335 is leading precedent and thereafter matter has also been examined by even Larger Benches.

15. In **State of Haryana vs. Bhajan Lal and others (supra)** issue of jurisdiction of this Court under Section 482 Cr.P.C. has been considered and what is laid down therein in paragraph 102, has been repeatedly followed and reiterated consistently. In a very recent judgment in **Google India Private Limited Vs. Visakha Industries and Ors.**, AIR 2020 SC 350, guidelines laid down in paragraph 102 in **Bhajan Lal's case (supra)** have been reproduced as under :

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the **following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice**, though it may **not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae** and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the **allegations made in the first information report** or the complaint, **even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.***

*(2) Where the **allegations** in the first information report and other materials, if any, accompanying the 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.***

(emphasis added)

16. Court has also reproduced note of caution given in paragraph 103 in **Bhajan Lal's case (supra)** which reads as under :

*“103. We also give a note of caution to the effect that the **power of quashing a criminal proceeding should be exercised very sparingly and with circumspection** and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

(emphasis added)

17. What would be the scope of expression “rarest of rare cases” referred to in para 103 in **State of Haryana vs. Bhajan Lal (supra)** has been considered in **Jeffrey J. Diermeier and Ors. Vs. State of West Bengal and Ors. , 2010 (6) SCC 243**, Court has said that words “rarest of rare cases” are used after the words 'sparingly and with circumspection' while describing scope of Section 482 CrPC. Those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but

with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasize that the power under Section 482 Cr.P.C. to quash FIR or criminal proceedings should be used sparingly and with circumspection.

18. Supreme Court in **Jeffrey J. Diermeier (supra)** infact referred to an earlier Three Judges' Bench judgment in **Som Mittal Vs. State of Karnataka, 2008 (3) SCC 753**, to explain phrase "rarest of rare cases". In **Som Mittal (supra)**, Court also said that exercise of inherent power under Section 482 CrPC is not a rule but exception. Exception is applied only when it is brought to notice of Court that grave miscarriage of justice would be added if trial is allowed to proceed where accused would be harassed unnecessarily or if trial is allowed to linger when prima facie it appears to Court that trial would likely to be ended in acquittal. Whenever question of fact is raised which requires evidence, Courts always said that at pre trial stage i.e. at the stage of cognizance taken by Magistrate power under Section 482 CrPC would not be appropriate to be utilized, since, question of fact has to be decided in the light of evidence which are yet to be adduced by parties.

19. In **Lakshman vs. State of Karnataka and others, 2019 (9) SCC 677** Court said that it is not permissible for High Court in application under Section 482 CrPC to record any finding wherever there are factual disputes. Court also held that even in dispute of civil nature where there is allegation of breach of contract, if there is any element of breach of trust with mens rea, it gives rise to criminal prosecution as well and merely on the ground that there was civil dispute, criminality involved in the matter cannot be ignored. Further whether there is any mens rea on part of accused or not, is a matter required to be considered having regard to facts and circumstances

and contents of complaint and evidence etc, therefore, it cannot be said pre judged in a petition under Section 482 CrPC.

20. In **Chilakamarthi Venkateswarlu and Ors. Vs. State of Andhra Pradesh and Ors.**, AIR 2019 SC 3913, Court reiterated that inherent jurisdiction though wide and expansive has to be exercised sparingly, carefully and with caution and only when such exercise would justify by tests specifically laid down in Section itself. In paragraph 14 of judgment, Court said :

*“14. For interference Under Section 482, three conditions are to be fulfilled. The **injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.**”*
(emphasis added)

21. Court also said that in exercise of jurisdiction under Section 482 CrPC it is not permissible for the Court to act as if it were Trial Court. Court has only to be prima facie satisfied about existence of sufficient ground for proceeding against accused. For that limited purpose, Court can evaluate material and documents on record but it cannot appreciate evidence to conclude whether materials produced are sufficient or not for convicting accused. High Court should not exercise jurisdiction under Section 482 CrPC embarking upon an enquiry into whether evidence is reliable or not or whether on reasonable apprehension of evidence, allegations are not sustainable, or decide function of Trial Judge. For the above proposition, Court relied on its earlier authority in **Zandu Pharmaceuticals Works Limited and others vs Mohd. Sharaful Haque and others**, 2005 (1) SCC 122.

22. Power under section 482 CrPC should not be exercised to stifle legitimate prosecution. At the same time, if basic ingredients of offences alleged are altogether absent, criminal proceedings can be quashed under Section 482 CrPC. Relying on **M.A.A. Annamalai**

Vs. State of Karnataka and Ors. , 2010 (8) SCC 524, Sharda Prasad Sinha Vs. State of Bihar, AIR 1977 SC 1754 and Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Ors., 1976 AIR 1976 SC 1947, Court in Chilakamarthi Venkateswarlu and Ors. (supra) said that where allegations set out in complaint or charge sheet do not constitute any offence, it is open to High Court exercising its inherent jurisdiction under Section 482 CrPC to quash order passed by Magistrate taking cognizance of offence. Inherent power under Section 482 CrPC is intended to prevent abuse of process of Court and to clear ends of justice. Such power cannot be exercised to do something which is expressly barred under CrPC. Magistrate also has to take cognizance applying judicial mind only to see whether prima facie case is made out for summoning accused persons or not. At this stage, Magistrate is neither required to consider FIR version nor he is required to evaluate value of materials or evidence of complainant find out at this stage whether evidence would lead to conviction or not.

23. It has also been so observed in **Rakhi Mishra Vs. State of Bihar and Ors., 2017 (16) SCC 772 and Sonu Gupta Vs. Deepak Gupta and Ors. , 2015 (3) SC 424** and followed recently in **Roshni Chopra and others vs. State of U.P. and others, 2019 (7) Scale 152**. Here Court also referred to judgment in **Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal and Ors., (2003) 4 SCC 139**, wherein paragraph 9, Court said that in determining the question whether any process has to be issued or not, Magistrate has to be satisfied whether there is sufficient ground for proceeding or not and whether there is sufficient ground for conviction; whether the evidence is adequate for supporting conviction, can be determined only at the trial and not at the stage of inquiry.

24. However, it is also true that at the stage of issuing process to the accused, Magistrate is not required to record detailed reasons. In

U.P. Pollution Control Board vs. Mohan Meaking Limited and others, 2000 (3) SCC 745, after referring to a decision in **Kanti Bhadra Shah Vs State of West Bengal 2001 SCC 722**, Court said :

*“Legislature has stressed the need to record reasons in certain situations such as dismissal of complaint without issuing process. There is **no such requirement imposed on a Magistrate for passed detailed order while issuing summons. Process issued to accused cannot be quashed merely on the ground that Magistrate had not passed a speaking order.**”*

(emphasis added)

25. Same proposition was reiterated in **Nupur Talwar Vs Central Bureau of Investigation and others, 2012 (11) SCC 465**.

26. In a Three Judges' Bench in **Parbatbhai Aahir and Ors. Vs State of Gujarat and Ors, 2017 (9) SCC 641**, Court has observed that Section 482 CrPC is prefaced with an overriding provision. It saves inherent power of High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In Paragraph 15 of the judgment Court summarized as under :

*“(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The **provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;***

*(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that **a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.** While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. **The power to***

quash Under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction Under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour

may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

(emphasis added)

27. Above observations have been reiterated in **Arun Singh and other Vs State of U.P.** passed in **Criminal Appeal no.250 of 2020 (arising out of Special Leave Petition (Crl.) No. 5224 of 2017)**, decided by Supreme Court on 10.02.2020.

28. Now, considering the facts in the light of aforesaid exposition of law, I find that first allegation against applicants is that their behavior was not cordial with applicants. It is not disputed that both the applicants were residing at Bangalore while OP-2 was married to Sri Rohit Agarwal residing at Greater Noida, District Gautambudh Nagar. Admittedly, marriage of OP-2 with Rohit Agarwal was solemnized on 17.02.2009 at Lucknow but thereafter she came to reside with Rohit Agarwal at his residence at Greater Noida, District Gautambudh Nagar and was residing thereat. The second allegation against applicant-1 is that she used to said that his brother's marriage was of 15 lakh and applicant-2 said that in his engagement, he got 10 gram gold coin while father of OP-2 gave gold coin only of 5 gram.

The third allegation against applicant-2 is that he gave a slip of Rs.5539/- and father of Informant-OP-2 gave Rs.55,000/- cash to him.

29. Police recorded statement of Informant-OP-2 under Section 161 Cr.P.C., copy whereof has been filed as Annexure-6 wherein FIR version has been reiterated. Some more facts in respect of other accused persons have been stated but there is no change by way of addition, alteration or modification in respect of allegations made against applicants in the FIR.

30. Statement of father of OP-2 is Annexure-7 to the affidavit who has made a general allegation that applicants and other accused persons used to harass and torture OP-2 and left no occasion to make comments for bringing less dowry in the marriage. He did not make any statement that he paid any amount of cash to applicant-2.

31. Statement of Smt. Kumkum Goel, mother of OP-2 is Annexure-8 to the affidavit and here also, I find that general allegation of harassment has been made against applicants along with other accused persons and there is no averment that any amount was paid to applicant-2 in cash by husband of Smt. Kumkum Goel i.e. Gopal Krishna Goel.

32. The statement of OP-2 is that applicant-1 said that marriage of her brother was of Rs.15 lakh and applicant-2 said that father of OP-2 gave a gold coin of 5 gram though applicant-2 receives in his marriage a gold coin of 10 grams. This statement is of no consequences. Mere comment or taunt, cannot amount to a cruelty as to attract 498-A IPC or Section 3 and 4 of Act, 1961. Even if the allegations of Rs.55,000/- paid cash by father of OP-2 is treated to be correct but it is not stated anywhere that applicant-2 has demanded any dowry and said dowry was paid to him. The assertion is that he gave a slip of Rs.5539/- and their payment was made. It appears to be some payment towards some expenses.

33. Taking the aforesaid averments to be correct and also considering the fact that applicant-1 has married with applicant-2 long back, they had a 7 year old son, and residing at Bangalore for several years and no specific date and time of their presence at Greater Noida, District Gautambudh Nagar has been mentioned, I find that apparently offences under Sections 498-A, 427, 506 IPC read with Sections 3/4 of Act, 1961 are not made out.

34. We now proceed to examine the above sections in detail. First of all, I propose to consider Section 498-A IPC which reads as under:-

35. **Section 498-A.** Husband or relative of husband of a woman subjecting her to cruelty.—

*“Whoever, being the husband or the relative of the husband of a woman, **subjects such woman to cruelty** shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.—For the purpose of this section, **“cruelty”** means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

36. In order to attract Section 498-A I.P.C., essential ingredients are:

“(a) that the victim was a married lady (she may also be a widow),

*(b) that she has been subjected to **cruelty by her husband or the relative of her husband,***

*(c) that such **cruelty** consisted of either (1) harassment of the woman with a view to coerce meeting a demand of dowry, or (2) a wilful conduct by the husband or the relative of her husband of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health;*

*(d) that such **injury aforesaid** may be **physical or mental**. When the husband or the relative of a husband of a woman subjects such woman to cruelty, he or they shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”*

37. Thus, the emphasis is on 'cruelty' which is the core element of Section 498-A IPC and this 'cruelty' has also been defined in the Section itself. The word 'cruelty' encompasses any of the following elements:-

- (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- (ii) any wilful conduct which is to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman.

38. The Explanation (b) of Section 498-A IPC defines 'cruelty' embraces which is in fold harassment. Criminality attached to what harassment is punishable in the following circumstances:-

- (i) where harassment of woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security; or
- (ii) where harassment is on account of failure by her or any person related to her to meet such demand.

39. It is thus evident that every cruelty or every wilful conduct for harassment do not have the element of criminal culpability. If there has been any physical violation or infliction of injury, the position may be different but that is not the case here. Some allegation of demand etc. have been levelled against other accused but in respect of applicants, even such allegations have not been made.

40. In this context, I find that facts of this case are broadly similar to an authority of Supreme Court in **Ramesh Vs. State of Tamil Nadu (supra)**. Therein application under Section 482 Cr.P.C. filed by Ramesh and Another was dismissed by Madras High Court and thereafter matter was taken up to Supreme Court. Wife of Ramesh filed a complaint dated 23.06.1999 with All Women Police Station, Trichy alleging commission of offences under Section 498-A and 406 IPC and Sections 3/4 of Act, 1961. Allegations made therein against husband, in-laws, including brother and sister of husband. After registration of report, investigation was conducted and charge-sheet was submitted by police on 28.12.2001 in the Court of Judicial Magistrate-III, Trichy. Magistrate taken cognizance, issued warrants against accused persons on 13.02.2002. Accused persons filed Criminal Misc. Writ Petition No.593 of 2002 in Bombay High Court for quashing FIR or in the alternative to transfer the FIR to Mumbai. Initially, proceedings were stayed but ultimately writ petition was dismissed as withdrawn on 02.06.2003 with a prayer to approach Madras High Court for appropriate relief. Thereafter, accused filed application under Section 482 Cr.P.C. challenging charge-sheet as also the cognizance order passed by Magistrate but the same was dismissed by Court. The matter was taken in Supreme Court and basically proceedings were challenged by raising following three grounds:-

- (i) Allegations are frivolous and without any basis;

(ii) Even according to FIR, no incriminating act has been done within the jurisdiction of Trichy Police Station and Court at Trichy and, therefore, learned Magistrate lacked territorial jurisdiction to take cognizance.

(iii) Taking cognizance of the alleged offence is barred under Section 468(1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2).

41. In this case, we are concerned with respect to first question which has been considered by Supreme Court in para-6 of the judgement and it has held that from the FIR and contents of charge-sheet, Court did not find that offence under Section 498-A, 406 IPC and Section 4 of Act, 1961 are made out against sister-in-law i.e. *Nanand*. She is a married sister of Informant's husband who is undisputedly living with her family. Assuming that during relevant time, i.e., between March and October, 1997, when Informant lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under [Section 498-A](#) or any other offence of which cognizance was taken.

42. Court further said:-

“Certain acts of taunting and ill-treatment of Informant by her sister-in-law (appellant) were alleged but they did not pertain to dowry demand or entrustment and misappropriation of property belonging to Informant. What was said against her in the F.I.R. is that on some occasions, she directed complainant to wash W.C. and she used to abuse her and used to pass remarks such as "even if you have got much jewellery, you are our slave."

43. It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody

could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the Informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of Informant to rope in as many of the husband's relations as possible. Neither the FIR nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against appellant Gowri Ramaswamy. High Court ought not to have relegated her to the ordeal of trial.

44. Following the above decision, a similar view has been taken by learned Single Judge Hon'ble Navin Sinha, J. (as His Lordship then was) in **Sunil Kumar Singh and Another Vs. State of Bihar and Another (supra)**.

45. A similar situation has also come up for consideration in **Geeta Mehrotra and Another vs. State of U.P. and Another (supra)**. Therein application under Section 482 Cr.P.C. filed by accused appellants was disposed of by this Court observing that the issue on territorial jurisdiction was raised which may be raised before Trial Court and till then, interim protection was allowed not to take coercive process against applicants. Accused applicants instead of approaching Magistrate filed appeal before Supreme Court. Facts are that one Shipra Mehrotra (before marriage Shipra Seth) filed FIR against her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law under Sections 498-A, 323, 504, 506 IPC read with Sections 3/4 of Act, 1961. It was registered as FIR No.54 of 2004 at Mahila Thana Daraganj, Allahabad. Complainant levelled allegation is that she was married with Shyamji Mehrotra s/o Balbir Saran who

was living at Eros Garden, Charmswood Village, Faridabad, Suraj Kund Road at Faridabad Haryana. Prior to marriage, Informant/complainant and her family members were told by Shyamji Mehrotra and his elder brother Ramji Mehrotra, their mother Smt. Kamla Mehrotra and sister Geeta Mehrotra that Shyamji is employed as a Team Leader in a top I.T. Company in Chennai and is getting salary of Rs.45,000/- per month. After negotiation between the parents of the complainant and the accused, marriage of the complainant Shipra Seth (later Shipra Mehrotra) and Shyamji Mehrotra was performed whereafter complainant left her house to live at the marital home. Atmosphere of marital house was peaceful for sometime but soon after marriage, when other relatives left, the maid who cooked meals was first of all paid-off by aforesaid four persons who then told complainant that from now onwards, complainant will have to prepare food for the family. In addition, the above four accused started taunting and scolding her on trivial issues. Complainant/Informant also came to know that Shyamji was not employed anywhere and always stayed in the house. Shyamji gradually took away all the money which the complainant had with her and then told her that her father had not given dowry properly, therefore, she should get Rupees five lakhs from her father in order to enable him to start business, because he was not getting any job. Complainant declined and said that she will not ask her parents for money whereupon Shyamji, on instigation of other accused-family members, started beating her occasionally. To escape every day torture and to upkeep financial stars of the family, complainant took up a job in a Call Centre at Convergys on 17.2.2003 where complainant had to do night shifts due to which she used to come back home at around 3 a.m. in the morning. Just on her return from work, the household people started playing bhajan cassettes after which she had to getup at 7'o clock in the morning to prepare and serve food to all the members in the family. Often on falling asleep in the morning, Shyamji, Kamla Devi

and Geeta Mehrotra tortured complainant every day mentally and physically. Ramji Mehrotra often provoked the other three family members to torture and often used to make complainant feel sad by making inappropriate statements about the complainant and her parents. Her husband Shyamji also took away the salary from complainant.

46. After persistent efforts, Shyamji finally got a job in Chennai and he went to Chennai for the job in May, 2003. However, there was no change in his behaviour even after going to Chennai. Complainant often called him on phone to talk to him but he always did irrelevant talks and conversation. He never spoke properly with complainant whenever he visited home and often used to hurl filthy abuses. Complainant states that she often wept and tolerated the tortures of accused persons for a long time but made no complain to her family members and that would make them feel sad. At last, when Complainant realized that even her life is in danger, she compelled to tell everything to her father on phone who was very upset on hearing her woes. On 15.7.2003, Complainant heard some conversation of her mother-in-law and sister-in-law and she had apprehension that they want to kill her in the night only. She apprised the situation to her father on phone who told that he will call back her father-in-law and she should go with him immediately and he will come in the morning. The father-in-law Satish Dhawan and his wife who were living in Noida came in the night and ultimately she came back and lodged report. Investigation was made by police and thereafter submitted charge-sheet against all the accused family members including husband and sister-in-law of Informant/complainant.

47. Sister and brother of Complainant's husband Shyamji Mehrotra filed an application under [Section 482](#) Cr.P.C. praying for quashing of charge-sheet and entire criminal proceedings on the ground of being malicious and only to rope entire family members without any actual

foundation or truth. It was also challenged that incident in any case had taken place at Faridabad and investigation could have been done there only, while investigation in the matter has been done by police at Allahabad who had no jurisdiction in the matter. High Court nonsuited the applicants on the ground that issue of territorial jurisdiction cannot be decided by it and the applicants may take up this plea before Trial Court. Thereafter, applicants Geeta Mehrotra and her brother Ramji Mehrotra filed appeal before Supreme Court. Their contention was that High Court was not examined whether any case was made out against sister-in-law and brother-in-law of Complainant/Informant. Even if the allegations and facts stated in the FIR are taken to be true, on the face of it, there was no specific allegation against sister and brother of Informant's husband and they were falsely and illegally implicated.

48. Relying on its earlier judgement in **Ramesh Vs. State of Tamil Nadu (supra)**, Court in **Gita Mehrotra (supra)** said as under:-

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

49. It also relied on an earlier decision in **G.V. Rao Vs. L.H.V. Prasad and Others 2000 (3) SCC 693**, wherein Court held that there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony to enable young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly

erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved who were counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different Courts.

50. Court reminded a well settled proposition that if FIR do not disclose a commission of offence by an individual accused, it would be justified to quash the proceedings against him/ her so as to prevent abuse of process of law. No one can be allowed to undergo an ordeal of illegal, malicious or false prosecution and undergo a physical and mental torture so long as such proceedings continue.

51. In **Preeti Gupta and Another Vs. State of Jharkhand and Another (supra)**, Court held as under:-

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

acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

52. Learned counsel for applicants has relied on a judgement in **U.Suvetha Vs. State by Inspector of Police and Another (supra)**. Therein the basis issue raised and decided is whether a concubine or a girl friend can be said to be relative so as to attract Section 498-A IPC and the same has been answered in negative. Therefore, aforesaid judgement, in my view, has no authority on the point of issue in the present application.

53. Thus, so far as applicants are concerned, Section 498-A IPC is not attracted in the present case if the allegation made in FIR, which we have already notice above, are taken to be true.

54. Now, I come to Section 427 IPC which deals with the offence of “Mischief”. The word “Mischief” defines in Section 425 IPC, therefore, both sections are reproduced as under:-

“**Section 427.** Mischief causing damage to the amount of fifty rupees.—

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

55. In order to attract Section 427 I.P.C., essential ingredients are:

“(i) *That the accused committed mischief;*

(ii) That he thereby caused loss or damage to the amount of fifty rupees or more.”

56. **Section 425 IPC** defines the word “Mischief”.

“Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such

change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.—*It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.*

Explanation 2.—*Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”*

57. Having gone through the entire FIR repeatedly and also enquired from learned counsel for OP-2 but neither I could find anything therein nor counsel for Informant/Complainant could show as to how Section 427 IPC is attracted in this case as there is no such allegation whatsoever against applicants in the entire report so as to attract offence of Section 427 IPC against applicants. There is no allegation that applicants have caused any wrongful loss or damage or destruction or destroy or diminishes its value or utility or affects to any property of Complainant/Informant i.e. OP-2 and, therefore, there is no mischief at all, hence, Section 427 IPC is not attracted at all.

58. Section 506 IPC deals with an offence of 'Criminal Intimidation' which is defined in Section 503 IPC and both are reproduced as under:-

“Section 506. Punishment for criminal intimidation.—

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to

impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

59. Ingredients essential to attract Section 506 IPC are as follows:-

“1. Accused threatened complainant, his person, property or reputation or the person or reputation of any one in whom he is interested.

2. Such threat was with some injury.

3. Threat was with intent to (1) cause alarm to complainant, (2) to cause complainant to do any act which he was not legally bound to do, (3) to cause to omit to do any act which he was legally entitled to do.

4. Threat given was (1) to cause death, (2) to cause grievous hurt, (3) to cause destruction of any property, (4) to cause an offence punishable with death, imprisonment for life, imprisonment for a term which may extend to 7 years or to impute unchastity to a woman.

5. Accused intended complainant so threatened or alarmed to do any act which he was not legally bound to do or to omit to do any act which the complainant was legally entitled to do as the means of avoiding the execution of such threat.”

“Section 503 IPC. Criminal intimidation.—

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

Explanation.—

A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

60. When questioned, learned counsel for OP-2 could not dispute that no allegation whatsoever has been made in the complaint/report which may amount to an offence of Criminal Intimidation on the part

of applicants, therefore, Section 506 read with Section 503 IPC is also not attracted in the case in hand.

61. Now, I come to remaining two Sections i.e. Sections 3 and 4 of Act, 1961 and both sections are also reproduced as under:-

“Section 3 of Act, 1961. 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 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.”

“Section 4 of Act, 1961. Penalty for demanding dowry. —*“If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six*

months, but which may extend to two years and with fine which may extend to ten thousand rupees:

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

62. Section 3 of Act, 1961 deals with offence “giving or taking dowry” or abetting the offence of giving or taking dowry. Section 4 of Act, 1961 deals with offence of “demand of dowry”.

63. The term “Dowry” has been defined in Section 2 of Act, 1961 and it reads as under:-

“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; 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.

*[***]*

Explanation II.— The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

64. If anyone is involved in the most heinous social evil of dowry, I have no manner of doubt that law must be allowed to take its course with full swing and there should not be any sympathy, compassion or leniency for such person who is indulged in such crime but only on whims and caprice someone who is not accused of any such offence, should not be implicated and undergo an ordeal criminal trial merely for the reason that he or she is relative of the husband and every relative of the husband should be made to teach a lesson. After all, performance of marriage by itself is no offence and if any one is

relative of one of the spouse who is alleged to be a guilty of offence of dowry, mere relationship should not be a reason to implicate such person in a criminal proceedings.

65. Hon'ble S.S. Nijjar, J. (as His Lordship then was) in **Lakhwinder Singh Vs. State of Punjab (supra)**, dealing with slightly a similar matter and observed that it is generally seen that when any marriage goes in rough weather the tendency of bride is to insinuate as many members of the family of her husband as possible with the allegation of laying demand for dowry and also treating her with cruelty when their demand for dowry is not being fulfilled. Allegations of misappropriation of dowry are also made some times against those members of the family of the husband who do not have anything with the dowry which is the basic concern of the bride and bridegroom and at best parents of the bridegroom. If there is no entrustment of any article of dowry to anyone and the ingredients of definition of dowry under Section 2 of Act, 1961 are not satisfied, offence of Section 3/4 of Act, 1961 will also not be attracted.

66. In these circumstances, it cannot be said that offences under Section 3/4 of Act, 1961 against applicants are made out and, in my view, proceedings, if allowed against applicants will be nothing except but a gross abuse of process of law and ends of justice required that the same must be quashed against applicants.

67. In the result, application is allowed. Impugned Charge-sheet No.38 of 2010 dated 31.03.2010 in Case Crime No.51 of 2010 dated 17.02.2010 and also order dated 22.04.2010 passed by Additional Chief Judicial Magistrate IIIrd, Lucknow taking cognizance, issuing process and registering as Case No.1908 of 2010, under Sections 498-A, 427, 506 IPC read with Sections 3/4 of Act, 1961 as well as subsequent proceedings thereto are hereby quashed.

Order Date :- 16.04.2020
Siddhant Sahu

Hon'ble the Chief Justice has nominated me to pronounce this judgment vide order dated 17.4.2020. Due to lock-down declared by the Central Government and Government of U.P., the judgment is pronounced by me today in Chamber as per Rule 1 sub-clause (1) (2) and (3) of Chapter VII of the Allahabad High Court Rules, 1952.

Dated 20.04.2020

(Justice Virendra Kumar-II)