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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 588 OF 2011**

Date of Decision: 04th September , 2013

1. Dr. AVNEESH GUPTA

2. Dr. M.G. GUPTA

3. Dr. KUSUM LATA GUPTA Petitioners

Through: Ms. Rebbecca John, Sr. Advocate
with Mr. V.K. Singh and Ms.
Preeti Singh, Advocates.

versus

STATE OF NCT OF DELHI & ORS Respondents

Through: Mr. Hemant Kumar, Advocate for
Mr. Saleem Ahmed, ASC for the
State with IO/SI Vipin Kumar.
Mr. Vikas Arora and Mr. Dhiraj
Manchanda, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226 and 227 of the
Constitution of India read with Section 482 of the Code of

Criminal Procedure for quashing FIR bearing No.29/2011 dated 05.02.2011 u/s 498A/406/34 IPC, P.S. Farsh Bazar, East Delhi.

2. Before coming to the grounds set up in the petition for quashing of FIR, it will be in the fitness of things to have a glance at the FIR registered at the instance of respondent no.2, Smt. Sashi Kanta.

3. An application was submitted by Smt. Sashi Kanta, to Incharge, Police Station Farsh Bazar, Delhi regarding torture and humiliation to her daughter and her family alleging *inter alia* that the marriage of her daughter, Dr. Samita Gupta with Dr. Avneesh Gupta was solemnised on 01.02.2000 with great pomp and show. After a few days of marriage, parents of her son-in-law told them that they were expecting more dowry and at every occasion or the other, the mother-in-law of her daughter insulted them before everyone saying that they got very little amount from the Minister i.e father of Samita Gupta. However she and her husband never took it seriously and thought that everything would settle down.

4. In March, 2001, Dr. Kusum Gupta and Dr. M.G. Gupta came to her house and demanded Rs. 10 lakhs and a Honda City Car.

For the sake of future of her daughter, she gave Rs.5,30,000/- after borrowing from her relatives and mortgaging her jewellery. Thereafter her son-in-law disclosed his wish for further studies in America and for that he had taken money from them several times. His visa was twice rejected by American embassy. Her husband made lot of efforts to get him visa only for the happiness of his daughter. After reaching there, her son-in-law started demanding money for his daily expenses and also forced her daughter to leave her government job and called her over there. In 2004 Avneesh Gupta demanded and asked Samita Gupta to bring \$ 12,000. After the marriage, the parents-in-law and the husband of her daughter took all her jewellery in their possession which was kept in a locker somewhere in Delhi or the same has been sold as they did not give any right of operation of locker to her daughter. At the time of going to America, only a small portion of jewellery was given to Samita and remaining jewellery was in the custody of her in-laws. In December, 2005 and April, 2007 when her daughter came to Delhi she informed that she wanted to continue her further studies in America but Avneesh is not allowing her and in fact he

had kept her there as a maid to fulfil his needs. When they told Avneesh and his parents, they replied that education of Avneesh is more important and only thereafter they will think about Samita. She came to know from Samita that when parents of Avneesh visited America, they were finding ways and means of fighting with Samita and while returning, they also told her that she will get the punishment very soon.

5. After December, 2007, financial condition of her family was not good. On 11.09.2008, Avneesh sent Samita from America to Delhi and asked her to bring \$ 15000 otherwise she need not come back to America. Same thing was repeated by the parents-in-law to her after she came back to Delhi. Her mother gave \$ 10000 along with arrival departure tickets to Samita. However her son-in-law continued to torture her daughter physically and mentally in spite of receiving money. She and her family were fulfilling all the illegal demands of her son-in-law and her parents-in-law only for the happiness of her daughter as she was their only child. Dr. Kusum Gupta cursed her daughter for not giving them any child.

They called her sterile and due to that her daughter got mentally depressed.

6. In January, 2010, Dr. Kusum Gupta and Dr. M.G. Gupta again asked for Rs. 3 lakhs which was handed over to them by her nephew Manish Gupta in cash. On 11.03.2010, at around 09.15 p.m, her son-in-law called up her husband and demanded Rs. 3 crores otherwise he will give divorce to her daughter. He also told them to inform them within a short span of time otherwise he will start divorce proceedings against her. This huge amount was beyond their imagination. So, on 11.03.2010, her husband went to meet Dr. Kusum Gupta and Dr. M.G. Gupta but they told him to do as Avneesh was saying. They came to know that Avneesh is working with a pathology laboratory in America and he wanted to purchase that and also to convert the same in his own name. Avneesh told her that he is completely settled in America so he does not need Samita any more. He also told her that he cancelled her visa and returned her back to Delhi and he will be free by getting divorce from her as her signatures has been taken on many blank papers.

7. On 21.03.2010 Kusum Gupta and M.G. Gupta asked them to sell the property in which they were residing for Rs. 3 crores and give the money to Avneesh so that he can purchase the pathology laboratory and then he will not divorce her daughter. On 28.03.2010 she along with her husband and relatives visited their house and requested to save the life of both the children and also to make Dr. Avneesh understand but they replied that they can do whatever they want to do. She suspected that they can do any mis-happening to her daughter, as such she prayed for strict action against them. This complaint culminated into registration of FIR against the petitioners.

8. The quashing of the FIR was sought on the ground that the marriage took place on 01.02.2000. Within 9 months i.e. on 15.09.2000, Dr. Samita Gupta took back all her jewellery and gifts received at the time of her marriage and this receiving was reduced into writing. On 31.01.2001, petitioner no.1 along with Dr. Samita Gupta shifted to Vaishali, Ghaziabad. On 20.08.2001, petitioners 2 and 3 disowned the petitioner no.1 as well as Dr. Samita and a written contract was duly signed and acknowledged by all of them.

On 13.03.2001 Samita visited the house of petitioner nos. 2 and 3 with the intention to kill them but on not finding them, she destroyed everything over there. Local police registered a complaint vide D.D. No.13A dated 13.03.2001 and also recorded the statement of two independent witnesses but no action was taken against Samita due to influence of her father Dr. Narender Nath. On 06.06.2004, petitioner no.1 left India for further studies and after 1-1/2 months approximately Samita Gupta also left India on the spouse visa provided by petitioner no.1 and since then both are residing at USA. Later on, Samita was diagnosed with Schizophrenia by the Doctor at U.S.A. On 11.03.2010, petitioner no.1 filed a petition for protection at U.S.A due to threats by Dr. Narender Nath. He also made a complaint to the Commissioner of Police at Delhi, Lokayukt in respect of continuous threat calls from father of Samita Gupta via e-mail. On 27.07.2010 a decree of divorce was granted by the Court at Arizona, U.S.A in favour of petitioner no.1 due to rude and cruel behaviour of Samita. Dr. Samita accepted the decree published by U.S.A Court and then started taking the maintenance amount at the rate of \$ 2000 per

month. Respondent no.2 filed a complaint before the Crime Against Women Cell, Krishna Nagar, Shahdara, Delhi on the same day. A notice was duly served upon petitioner nos. 2 and 3 on the same day and later on the complaint was converted into FIR, as such the petition was filed for quashing of FIR.

9. In the status report filed by respondent no.1, it was submitted that in the complaint itself there are specific allegations against Dr. Kusum Gupta and Dr. M.G.Gupta, parents of Avneesh regarding demand of Rs.10 lakhs and a Honda City car. There are specific allegations against Avneesh regarding demand of \$ 15,000 in the year 2008 and Rs. 3 crores in the year 2010 for the purpose of Pathology Laboratory in U.S.A. During the course of investigation, parents of Avneesh submitted the documents pertaining to divorce granted by Arizona State, which reveals that divorce has been granted on the ground that marriage has broken irretrievably but as per the Hindu Marriage Act, irretrievable breakdown of marriage is not a ground for divorce in India. Notice u/s 41A Cr.P.C was served upon Dr. Avneesh Gupta via e-mail but

despite that he has not joined investigation. Investigation is still in progress.

10. I have heard Ms. Rebecca John, Senior Advocate for the petitioner, Mr. Saleem Ahmed, Additional Standing Counsel for respondent no.1 and Mr. Vikas Arora, counsel for respondent no.2 at great length and have perused the record.

11. Learned senior counsel for the petitioner submitted that registration of FIR is an abuse of process of Court. Within 9 months of the marriage, Dr. Samita Gupta received back the gold, jewellery, sarees and other gift items from petitioner nos. 2 and 3 vide a writing dated 15.09.2000. All the grounds set up in the petition were sought to be substantiated on the basis of documents placed on record viz. receipt of jewellery, sarees and other gift items vide writing dated 15.09.2000, writing dated 20.08.2001, vide which petitioner nos. 2 and 3 disowned petitioner no.1 and Dr. Samita Gupta. Reference was made to D.D. No.13A dated 13.03.2001 when Samita visited the house of petitioner nos.2 and 3 and created a scene which was witnessed by two independent witnesses whose statements were recorded by the police.

Thereafter petitioner no.1 left India for further studies. Dr. Samita also went to U.S.A. Divorce petition was filed which was duly contested by Dr. Samita and she accepted the decree of divorce and started taking maintenance. It was submitted that not only she accepted the decree but also kept on moving application for modification of the maintenance order. During this entire period, no complaint was made by Dr. Samita at any point of time. Although allegations are made in the FIR that on the demand of petitioners, money used to be given, however, nothing has been brought on record to show as to what was the source of income and how such payment was made. The decree of divorce granted by the foreign Court is binding since it was fully contested by Dr. Samita Gupta. Now after a lapse of 1-1/2 years, she has challenged the divorce decree. However, no stay has been granted. During the course of anticipatory bail application moved by petitioner nos. 2 and 3, offer was given to open the locker and to make inventory of the articles. Same was opened but nothing was found. Dr. Samita is guilty of suppressing material facts inasmuch as she did not disclose to the police regarding grant of decree of divorce of

Arizona Court, as such due to suppression of material fact, the complaint is liable to be thrown at the threshold. The complaint has not been made by Dr. Samita Gupta but by her mother and the averments are merely hearsay. In the face of unimpeachable documents filed by the petitioners, no useful purpose will be served by keeping the complaint alive and as such the FIR deserves to be quashed.

12. Reliance was placed *on Priya Vrat Singh & Ors v. Shyam ji Sahai*, 2008(3) JCC 2069; *Rajiv Thapar & Ors vs. Madan Lal Kapoor*, 2013(1) Crimes 169 (SC); *Kanchan Gulati & Anr. vs. The State & Ors*, 2007 IX AD (Delhi) 237; *Prashant Bharti vs. State of NCT of Delhi*, 2013(1) Crimes 195(SC); *Smt. Neera Singh v. The State*, 138(2007) DLT 152; *MCD vs. State of Delhi and Another*, 2005 SCC (Cri) 1322.

13. Refuting the submissions of learned counsel for the petitioner, it was submitted by learned Additional Standing Counsel that the investigation is still in progress. Petitioner no.1 has not joined investigation despite the fact that notice for appearance has duly been served upon him via e-mail.

Anticipatory bail was granted to petitioner no.2 and the application for cancellation of anticipatory bail filed by the State is still pending. It was further submitted that there are disputed questions of fact which cannot be decided in the writ petition and that being so, the writ petition is not maintainable and is liable to be dismissed.

14. It was submitted by learned counsel for respondent no.2 that there is no question of suppression of facts inasmuch as the complaint was made in the year 2010 whereas the divorce was granted in the year 2013. Therefore, this factum could not have been disclosed in the complaint which was made as far back as in the year 2010. As regards the decree of divorce, it was submitted that the same has been challenged by Dr. Samita Gupta in this Court which is pending adjudication. She in fact, did not contest the divorce petition on merits and she had raised objection regarding the jurisdiction inasmuch as the divorce petition was filed on the ground of irretrievable break down of marriage which is not a ground under Hindu Marriage Act. That being so, the divorce decree is not binding. As regards maintenance, it was the

right of Dr. Samita Gupta to receive maintenance and, therefore, she got maintenance. Furthermore, it was submitted that although petitioners are relying upon a writing dated 20.08.2001 whereby petitioner nos. 2 and 3 disowned petitioner no.1 as well as Dr. Samita, however, this document was not even acted upon by the petitioners inasmuch as, as per the declaration given by them, they have visited petitioner no.1 at U.S.A thrice. If they had nothing to do with petitioner no.1, why did they go to U.S.A thrice. Moreover although this writing is dated 20.08.2001, however the joint locker was opened in the year 2004. The jewellery is still lying with the petitioners which has not been returned. Furthermore, there is no allegation that the averments made in the FIR does not make out any case or that the allegations are insufficient to make out a case. By filing this petition, petitioners want a pre-trial and pre-judging the case which is impermissible under law. Petitioner no.1 although has joined petitioner nos. 2 and 3 in filing this petition but he himself has not joined investigation and a look out notice has been issued against him, as such it was submitted that the petition is liable to be dismissed.

15. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

16. Section 482 of the Code of Criminal Procedure is extracted as under:-

“482. Saving of inherent powers of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. In *Priya Vrat Singh*(supra) it was observed by Hon’ble Supreme Court as under:-

“5. The parameters for exercise of power under Section 482 have been laid down by this Court in several cases.

6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which

are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of

magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: **Janata Dal v. H.S. Chowdhary** (1992 (4) SCC 305), **Raghubir Saran (Dr.) v. State of Bihar** (AIR 1964 SC 1) and **Minu Kumari v. State of Bihar** (2006 (4) SCC 359).”

18. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court u/s 482 of Cr.P.C has been dealt with in **Rajiv Thapar**(supra) where it was held as under:-

21. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have

placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Code of Criminal Procedure, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Code of Criminal Procedure the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Code of Criminal Procedure to quash such criminal

proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom)

specially when, it is clear that the same would not conclude in the conviction of the accused.

19. This proposition of law was reiterated in *Prashant Bharti* (supra). In *Kanchan Gulati* (supra) also it was observed that quashing of FIR in exercise of writ jurisdiction is a discretion of the Court. Court should exercise discretion in rarest of rare case, where the circumstances and the facts reveal that, even if all the allegations made in the FIR are considered as true, no offence is made out.

20. In this case (i.e. *Kanchan Gulati's* case), the complainant had all along lived in U.S.A and left India immediately after marriage. There were no allegations of cruelty or breach of trust during this period. The allegations were that her father spent money in marriage beyond his capacity. It was observed that this does not amount to a dowry demand. If her jewellery or other articles were left behind in India with her mother-in-law or brother-in-law, the Court of competent jurisdiction had passed order in respect of these dowry articles and directed the parties for exchange of those articles. Decree of divorce passed by Court of U.S.A was not challenged by the complainant. Under those circumstances, the FIR was quashed.

21. Similarly in ***Rajiv Thapar*** (supra), complainant initially alleged death of her daughter by poison and later added strangulation as cause of death and also alleged strained relations and harassment. No allegations were substantiated. On the other hand, the material relied upon by the appellant was not rebutted by the complainant. The post-mortem report also supported the appellant's case. Under those circumstances, it was observed that the High Court should have exercised its power u/s 482 Cr.P.C and while allowing the appeal, proceedings were quashed. Similarly in ***Prashant Bharti*** (supra), FIR was registered u/s 376 IPC. The allegations of the prosecutrix were found to be false. She did not refute any material relied upon by the appellant. In fact, she herself prayed for quashing of the FIR lodged by her. Under those circumstances, Hon'ble Supreme Court quashed the proceedings. ***Neera Singh***(supra) was a petition u/s 482 Cr.P.C for setting aside the order passed by learned Additional Sessions Judge. FIR u/s 498A IPC was registered. The learned Magistrate discharged all the other family members except the husband. The revision was dismissed and the order was upheld by learned Additional Sessions

Judge, Delhi. Keeping in view the facts and circumstances of the case, it was observed that the petition is devoid of merit and was dismissed. ***Jagdish Thakkar vs. State of Delhi***, 1993 JCC 117 was relied upon for submitting that even if the FIR is registered u/s 406 IPC, as observed in that case, the proceedings u/s 406 and 498A are not meant for recovery of jewellery and dowry articles. Wife of the petitioner can move the civil court for recovery of the articles. ***MCD***(supra) was relied upon for submitting that respondent is guilty of suppressing material facts of divorce decree and, therefore, the petition is liable to be thrown at the threshold. ***Y. Narasimha Rao and Others v. Y.Venkata Lakshmi and Another***, (1991) 3 SCC 451 was relied upon for showing that the decree of divorce passed by Arizona Court is binding upon Dr. Samita Gupta.

22. At the outset, it may be mentioned that in view of the legal proposition enunciated in ***Priya Vrat*** (supra), ***Prashant*** (supra) and ***Rajiv Thapar*** (supra), the prayer for quashing can be entertained only if the material relied upon by the petitioner would rule out the assertion contained in the complaint. The various

averments made in the complaint have not been refuted or challenged by the petitioner. At this stage, the truthfulness or otherwise of allegations levelled by the complainant against the accused require to be evaluated. Similarly it is not a stage for determining the defence raised by the petitioners.

23. As observed by Hon'ble Supreme Court in ***Rajiv Thapar*** (supra) and reiterated in ***Prashant Bharti*** (supra), even if the accused is successful in showing some suspicion or doubt in the allegations levelled by the complainant, it would be impermissible to discharge them before trial because that would result in giving finality to the accusations levelled by the prosecution/complainant without allowing them to adduce evidence to substantiate the same. On the other hand, if the trial is proceeded with, the petitioner would still be in a position to establish their defence by producing evidence in accordance with law. The quashing could have been done if the allegations levelled in the complaint, even if taken on its face value, does not disclose commission of any offence which is not the case in the instant case. There are serious allegations of demands raised by the petitioners from time to time causing

harassment to Dr. Samita Gupta and her parents. Under the circumstances, since disputed questions of facts are involved, there is no ground for quashing of FIR.

24. In *Satvinder Kaur v. State (Govt. of NCT of Delhi) & Another*, AIR 1999 SC 3596 it was held:

“It is a well settled that if an offence is disclosed the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR prima facie, discloses the commission of an offence, the court normally does not stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decision of this Court that for the purpose of exercising its powers under Sec. 482, Cr.P.C to quash an FIR or a complaint, the High Court will have to proceed entirely on the basis of allegations made in a complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.”

25. As per the report, the complaint is still being investigated by the concerned authorities and while exercising its power u/s 482 Cr.P.C, this Court will have to proceed entirely on the basis of allegations made in the complaint and cannot examine the correctness or otherwise of the allegations.

26. In *State of Haryana vs. Choudhary Bhajan Lal & Ors* reported in JT 1990(4) SC 650, following guidelines were given:-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. 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.

27. A bare perusal of these guidelines goes to show that quashing of FIR can be done only if the allegations made in the complaint, even if taken at their face value, do not *prima facie* constitute any offence and the uncontroverted allegations made in the FIR or complaint do not disclose the commission of any offence. As narrated above, the allegations made in the complaint are still at the stage of investigation and it cannot be said that the uncontroverted allegations made in the FIR or complaint do not disclose the commission of any offence against the petitioners. In fact the averments made in the petition are required to be

adjudicated upon at the stage of trial. It is settled law that disputed questions of fact cannot be adjudicated while exercising writ jurisdiction.

28. Adverting to the case in hand, the petitioner has raised pure question of facts for determination in the writ proceeding. It is well known that in a writ petition, ordinarily such disputed question of facts is not to be entertained. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. This Court in exercise of jurisdiction under Article 226 of the Constitution cannot adjudicate the matter where the foundational facts are disputed. Rival contentions of the parties cannot be decided in a writ proceeding as held in *Himmat Singh Vs. State of Haryana & Ors.*, (2006) 9 SCC 256; *Mukesh Kumar Aggarwal Vs. State of Uttar Pradesh & Ors.*, (2009) 13 SCC 693; *Bhagavat Singh and etc. Vs. State of Tamil Nadu and Ors.*, 1998 Cr.LJ 3513. This Court is not required to embark upon an enquiry whether the allegations in the petition which are controverted by the respondents are correct or not. It cannot be said that the allegations made in the complaint which

culminated in registration of FIR, even if taken at their face value and accepted in their entirety, do not prima facie set out any offence or make out a case against the accused. The investigation is still at threshold and petitioner no.1 has not even joined the investigation. Under the circumstances, it is not a case where the Court should exercise its discretion by quashing the FIR.

29. As regards grant of decree of divorce granted by Arizona Court, and that the foreign judgment is binding and reliance was placed on *Narsimha Rao* (supra), it is suffice to say that Dr. Samita Gupta has filed a petition for declaring the decree as null and void which is pending adjudication in this Court. Whether the decree is binding or not is not required to be adjudicated upon in this petition and in fact no observation is warranted, lest it may affect the merits of that case.

30. Suffice it to say, since the allegations made in the complaint constitutes cognizable offence and FIR has been registered which is required to be investigated, that being so, at this juncture there is no ground to quash the FIR. A perusal of the FIR prima facie reveals allegations of demand and continuous harassment. The

FIR, on the face of it discloses the commission of cognizable offences. The matter is still pending investigation and it is for the investigating agency to investigate the matter and find out the role of each accused before final charge sheet is filed. In case the allegations are not made out against any of the petitioners, no charge sheet qua the said petitioner would be filed. However, at this stage, there is no ground to quash the FIR.

The petition, being devoid of merit, is dismissed.

**SUNITA GUPTA
(JUDGE)**

SEPTEMBER 04, 2013
as