

A.F.R.Neutral Citation No.:-2024:AHC-LKO:34979Reserved on 30.04.2024Delivered on 07.05.2024**Court No. - 27****Case :-** APPLICATION U/S 482 No. - 4095 of 2023**Applicant :-** Madhu Tiwari**Opposite Party :-** State Of U.P. Thru. Secy. Home Deptt. Lko. And Others**Counsel for Applicant :-** Nadeem Murtaza, Aditya Vikram Singh**Counsel for Opposite Party :-** G.A.

with

Case :- APPLICATION U/S 482 No. - 3121 of 2022**Applicant :-** Mitali Tiwari And 5 Others**Opposite Party :-** State Of U.P. Thru Prin Secy Home Sectt Lko And Another**Counsel for Applicant :-** Pramod Singh, Anand Kumar Srivastava, Arvind Kumar Pandey, Pramod Singh**Counsel for Opposite Party :-** G.A., Nadeem Murtaza

with

Case :- APPLICATION U/S 482 No. - 5104 of 2021**Applicant :-** Himanshu Tiwari**Opposite Party :-** State Of U.P. Thru Secy. Home And Anr.**Counsel for Applicant :-** Pratul Gupta**Counsel for Opposite Party :-** G.A., Ram Bali Tiwari, Vimlesh Chandra**Hon'ble Shamim Ahmed, J.**

1. Heard Sri Alok Saran as well as Sri Himanshu Suryavanshi, learned counsel for the Mitali Tiwari and Sri Nadeem Murtaza, learned counsel for the Himanshu Tiwari and Madhu Tiwari.

2. Since all the three cases are counter blast cases filed by the parties against each other, therefore, all the cases are being decided with the common judgment and Application under Section 4095 of 2023 is being treated as leading case.

(I) **Application under Section 4095 of 2023:-** This application has been filed with a prayer to quash the impugned order dated 27.03.2023 in Criminal Revision Case No.209/2022 (Madhu Tiwari Vs. State of U.P. and 7

Others) passed by learned Sessions judge-I. Lucknow, which had affirmed the order dated 28.02.2022 passed by learned Judicial Magistrate-III, Lucknow, whereby partially opposite parties are summoned for minor offences under Sections 323, 504, 506 I.P.C. and all the opposite parties were summoned for committing additional major offences under Sections 307, 384, 385, 388, 389 I.P.C. read with Section 34 I.P.C. in Criminal Complaint Case No.1882 of 2020 pending before the learned Judicial Magistrate-III, Lucknow.

(II) Application under Section 5104 of 2021:- This application has been filed with a prayer to quash the order dated 17.11.2021 in Criminal Revision No.152 of 2021, under Section 397 Cr.P.C. read with Section 399 Cr.P.C. passed by learned Additional District and Sessions Judge-7, Lucknow as well as to quash the order dated 27.07.2021 in Misc. Criminal Case No.3803 of 2020, under Sections 190 Cr.P.C. read with Section 200 Cr.P.C. passed by learned Special Chief Judicial Magistrate Custom, Lucknow.

(III) Application under Section 3121 of 2023:- This application has been filed with a prayer to quash the order of summoning dated 28.02.2022 passed by the Judicial Magistrate-III, Lucknow in Criminal Complaint No.1882 of 2020, under Sections 323, 504, 506 I.P.C., Police Station Mandiaon, District Lucknow as well as to quash the entire criminal proceedings in pursuance thereof.

3. On 03.04.2024, this Court has passed the following order:-

“Heard Mr. Anand Kumar Srivastava, learned Counsel for the applicants, Mr. Nadeem Murtaza, learned Counsel for the private opposite parties, Mr. Ashok Kumar Singh, learned A.G.A. for the State-opposite party.

The present application under Section 482 Cr.P.C. has been moved by the applicant seeking quashing of the impugned order dated 27.03.2023 in Criminal Revision Case No.209/2022 (Madhu Tiwari vs. State & 7 Others) passed by court of learned Sessions Judge I, Lucknow which had affirmed order dated 28..02.2022 passed by learned Court of Judicial Magistrate III, Lucknow which has only partially summoned the opposite parties for committing minor offences under Sections 323/504/506 I.P.C. and thereby summoning all the opposite parties for committing additional major offences under Section 307, 384, 385, 388,

389 r/w 34 I.P.C. in Criminal Complaint Case No.1882/2020 (Madhu Tiwari vs. Mitali Tiwari & 6 Others) pending before learned Court of Judicial Magistrate III, Lucknow.

In compliance of the order dated 12.03.2024 passed by the Coordinate Bench of this Court, both the parties are present in person, who have been identified by their respective counsels.

On query made by this Court, Ms. Mitali Tiwari, submits that she is ready to settle the dispute if she is paid Rs.10,00,000/- (Rupees Ten Lacs Only) as one time alimony for her and her daughter, namely-Sambhavi Tiwari.

Mr. Himanshu Tiwari, husband of Ms. Mitali Tiwari submits that he is also ready to settle the dispute by paying a sum of Rs.10,00,000/- (Rupees Ten Lacs Only) as one time alimony to his wife and his daughter. In this regard he is ready to bring the draft of Rs.5,00,000/- (Rupees Five Lacs Only) on the next date of listing of this case, in the name of Ms. Mitali Tiwari i.e. half of the alimony amount. The remaining amount of Rs.5,00,000/- will be paid to Ms. Mitali Tiwari within 20 days' from the date of filing a decree of divorce under Section 13(B) of Hindu Marriage Act.

Further, it was also assured by both the parties that the decree of divorce under Section 13(B) of Hindu Marriage Act will be filed within 20 days' from the date of this order before the Principal Judge, Family Court, Lucknow and it was also requested by learned Counsel for the parties that a suitable direction may be given by this Court to the family court to decide the decree of divorce, if filed, by the parties by diluting the period of motions in view of the judgment of Hon'ble Supreme Court in the case of **Amardeep Singh vs. Harveen Kaur, 2017 (8) SCC 746** and Division Bench of this Court in the case of **Shalini Massey vs. Neeraj Samuel Dass passed in First Appeal Defective No.392 of 2019**.

The requests and proposals made by both the parties appear to be genuine and justified and it is better that the parties may be separated as early as possible for their better life ahead.

In view of the above, the Principal Judge, Family Court, Lucknow is directed to decide the decree of divorce, if filed, by the parties within the stipulated time in light of the law laid down by the Hon'ble Supreme Court in the case of **Amardeep Singh (supra)** and Division Bench of this Court in the case of **Shalini Massey (supra)** positively by diluting the period of motions/cooling period.

Accordingly, list/put up this case on 10quashing.04.2024 for further orders before this Court.

It is made clear that if the draft of Rs.5,00,000/- (Rupees Five Lacs Only) is not brought by Mr. Himanshu Tiwari, on the next date fixed, this Court will proceed and will pass final order in this case.

On the next date fixed, both the parties shall again appear in person.”

4. Thereafter, this case was listed on 10.04.2024 before this Court and following order was passed:-

“In compliance of the order dated 03.04.2024, Sri Himanshu Tiwari as well as Ms. Madhu Tiwari are present in person before this Court. They have been identified by their counsel Sri Nadeem Murtaza. However, Ms. Mitali Tiwari is not present owing to some illness, however, her counsel Sri Anand Kumar Srivastava is present.

Sri Himanshu Tiwari has brought a demand draft of Rs.5,00,000/- drawn at the ICICI Bank, Lucknow dated 09.04.2024 in favour of Mitali Tiwari. Photocopy of the same has been seen and signed by Sri Anand Kumar Srivastava, learned counsel for the Mitali Tiwari, which is taken on record.

Sri Anand Kumar Srivastava, Advocate seeks some further time so that original draft may be handed over to Mitali Tiwari.

Sri Nadeem Murtaza, Advocate has no objection to the prayer made by Sri Anand Kumar Srivastava, Advocate.

Accordingly, put up this case on 18.04.2024 alongwith connected matter before this Court for further orders.

On the next date of listing, Ms. Mitali Tiwari, Ms. Madhu Tiwari and Sri Himanshu Tiwari shall again appear in person before this Court. Sri Himanshu Tiwari shall again bring the aforesaid bank draft on that day so that the same may be handed over to Mitali Tiwari.”

Again this case was listed on 18.04.2024 before this Court and following order was passed:-

“The present applications are filed by the respective parties against each other and both these applications are arising out of counter cases filed by the respective parties, thus, the Coordinate Bench of this Court clubbed these two application with the consent of both the parties vide order dated 12.03.2024. This Court is treating Application U/S 482 No.4095 of 2023 as leading case and is proceeding accordingly.

Vakalatnama filed today in the Court by Mr. Himanshu Suryavanshi, Advocate on behalf of applicant-Ms. Mitali

Tiwari and others in Application U/S 482 No.3121 of 2022 is taken on record.

Heard Mr. Nadeem Murtaza, learned Counsel for the applicant, namely-Madhu Tiwari, Mr. Alok Saran, Advocate alongwith Ms. Swati Singh, Advocate holding brief of Mr. Himanshu Suryavanshi, learned Counsel for the opposite party No.2, Mr. Ashok Kumar Singh, learned A.G.A-I for the State-opposite party.

In compliance of the orders dated 03.04.2024 and 10.04.2024 passed by this Court, the applicant, namely-Ms. Madhu Tiwari alongwith her son, namely-Mr. Himanshu Tiwari and the opposite party No.2, namely-Ms. Mitali Tiwari (wife of Mr. Himanshu Tiwari) are present before this Court, who have been identified by their respective counsel and Mr. Himanshu Tiwari has brought an original demand draft of Rs.5,00,000/- (Rupees Five Lacs Only), which was seen and verified by learned Counsel for the opposite party No.2 and the same was handed over to the opposite party No.2, namely-Mitali Tiwari in the open court. The opposite party No.2 gave a receiving of the same on the photostat copy, which is taken on record.

The applicant and her son, namely-Mr. Himanshu Tiwari have shown their bonafide by handing over the demand draft of Rs.5,00,000/- (Rupees Five Lacs Only) to the opposite party No.2 as directed by this Court. Now, only Rs.5,00,000/- (Rupees Five Lacs Only) is to be paid to the opposite party No.2, namely-Ms. Mitali Tiwari.

Both the parties and their counsel submit before this Court that they have decided to file a petition under Section 13(B) of the Hindu Marriage Act for separation of both the parties for their better life ahead. They further submit that the said petition will be filed before the concerned Family Court within 15 days' from today.

Before concluding their arguments, learned Counsel for the parties further submit that some suitable order may be passed regarding the visitation rights to the father of the minor child, namely-Shambhavi Tiwari, D/o of Ms. Mitali Tiwari and Mr. Himanshu Tiwari.

Learned A.G.A-I for the State-opposite party No.1 has no objection to the proposals made by learned Counsel for the parties.

In view of the above, as agreed between the parties present in person before this Court, they are permitted to file a petition under Section 13(B) of the Hindu Marriage Act within 15 days' from today and if any such petition is filed before the concerned Family Court, the Family Court will decide the said petition in compliance of the order dated

03.04.2024 passed by this Court in this case. It is further directed that after filing of the said petition, learned Counsel for the applicant will file a supplementary affidavit annexing therein the photostat copy of the said petition so filed by the parties before the concerned Family Court on the next date of listing.

It is further observed here that remaining amount of Rs.5,00,000/- (Rupees Five Lacs Only), which was promised by Mr. Himanshu Tiwari to be paid to the opposite party No.2 will be paid to her within ten days' from the date of passing of decree of divorce.

So far as the visitation right is concerned, Mr. Himanshu Tiwari, husband of Ms. Mitali Tiwari shall have visitation rights to meet his daughter once every month on the Fourth Sunday between 11:00 A.M. to 1:30 P.M. at Saharaganj Mall, Lucknow starting from the Month of April, 2024 by giving one day prior intimation to the opposite party No.2, Ms. Mitali Tiwari, who is the mother of the minor child. Further, Mr. Himanshu Tiwari, shall also have right to talk to his daughter on every 1st and 4th Saturday of the every Month between 7:30 P.M. to 8:00 P.M. on whatsapp/phone call on mobile of Ms. Mitali Tiwari.

Accordingly, list/put up this case on 25.04.2024 before this Court for further orders.”

5. Again this case was listed before this Court on 25.04.2024 and this Court has passed the following order:-

“In compliance of the orders dated 03.04.2024 and 18.04.2024 passed by this Court, learned counsel for the opposite party No.2 Sri Nadeem Murtaza has filed supplementary affidavit today in Court, in which he has given the details, in paragraph Nos. 9 and 10, of the cases filed by each of the parties either to be quashed by this Court or the cases should be withdrawn by the parties before the competent court, where the case is pending and he has also filed the settlement agreement as well as the certified copy of the petition filed under Section 13 B of the Hindu Marriage Act filed before the court of Principal Judge, Family Court, Lucknow, which is annexed as Annexure No.3 to the supplementary affidavit.

Learned counsel for the applicant submits that the parties have already settled the dispute, thus a positive direction be given to the Principal Judge, Family Court, Lucknow to decide the petition filed by the parties under Section 13 B of the Hindu Marriage Act expeditiously in view of the judgment rendered by Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur: AIR 2017SC 4417** and further order passed by the Division Bench of this Court in

First Appeal Defection No. 392 of 2019: Shalini Massey Vs. Neeraj Samuel Dass decided on 07.01.2020.

Sri Alok Saran as well as Sri Himanshu Suryavanshi, learned counsel for the opposite party No.2 made a agreement with the request and proposal made by learned counsel for the applicant.

The request and proposal made by the both the counsels as well as the parties appears to be genuine and the final order in this regard will be passed on the next date fixed.

List this case on 30.04.2024 for further orders along with record of Application under Section 482 Cr.P.C. No. 5104 of 2021 and Application under Section 482 Cr.P.C. No. 3121 of 2022.”

6. Sri Nadeem Murtaza, learned counsel for Himanshu Tiwari submits that both the parties have arrived at a settlement, copy of the settlement agreement dated 20.04.2024 is annexed as Annexure No.SA-2 to the supplementary affidavit. He further submits that in pursuance of this Court’s order dated 03.04.2024, the parties have mutually filed a divorce petition under Section 13(B) of Hindu Marriage Act before the learned Principal Judge, Lucknow on 20.04.2024, copy of the petition is Annexed as Annexure No.SA-3 to the supplementary affidavit. He further submits that Rs.5,00,000/- has already been paid to the wife and as per agreement the remaining amount of Rs.5,00,000/- will also be paid by the husband Himanshu Tiwari to the wife Mitali Tiwari within ten days after the passing of divorce decree. Thus, he submits that entire proceeding of the cases pending between both the parties which are mentioned at paragraph No.10 of the supplementary affidavit from serial no. I to X may be quashed and the learned Principal Judge, Family Court, Lucknow be directed to decide the divorce petition of the parties filed under Section 13(B) of the Hindu Marriage Act in light of the judgment rendered by Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur: AIR 2017 SC 4417** and further order passed by the Division Bench of this Court in **First Appeal Defective No. 392 of 2019: Shalini Massey Vs. Neeraj Samuel Dass decided on 07.01.2020**. He further submits that Civil Contempt CAPL No.510 of 2022 “Himanshu Tiwari & Anr. Vs. Mitali Tiwari” filed by Himanshu Tiwari had already been dismissed as withdrawn by a co-ordinate Bench of this Court vide order dated 29.04.2024. Paragraph Nos. 19 and 20 of **Amardeep Singh (Supra)** are reproduced hereinunder:-

“19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a

case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

Further, this Court has been pleased to observe paragraph No.12 in the case of **Shalini Massey (Supra)** which is reproduced hereinunder:-

"12. The provisions contained in Section 10A of the Divorce Act, 1869, are, in substance, a verbatim reproduction of the provisions contained in Section 13B of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954. The only substantial difference is that, instead of the period of one year mentioned in Section 13B(1) of the Hindu Marriage Act, 1955 and Section 28(1) of the Special Marriage Act, 1954, a period of two years of separate residence is provided under Section 10A(1) of the Divorce Act, 1869. The beneficiaries under the abovementioned provisions of different statutes are persons who want divorce by mutual consent and who file joint petition for that relief. There can be no discrimination among them on the ground of religion. Divorce by mutual consent is a secular concept. When the Apex Court has declared the law that the "cooling off period" of six months provided under Section 13B(2) of the Hindu Marriage Act, 1955 is not mandatory but directory and such period can be allowed to be waived by the court on

satisfaction of certain conditions, denying that benefit to persons who are governed by the Divorce Act, 1869 would amount to unjust discrimination. Therefore, we are of the considered opinion that the dictum laid down by the Apex Court in Amardeep Singh (supra) is applicable to a petition for divorce filed under Section 10A of the Divorce Act, 1869 and on satisfaction of the conditions laid down in that decision, the Family Court can waive the period of six months stipulated under Section 10A(2) of that Act.

In view of the foregoing discussion, we find that but for the difference in period provided for making the second motion, the provisions of Section 13B (1) of Act of 1955 and 28 (1) of the Act of 1954 and 10A (1) of the Act, the aforesaid provisions are verbatim reproduction of each other. Since the Hon'ble Apex Court while considering the question whether the minimum period of six months stipulated u/s 13B (2) of Act of 1955 in the case of Amardeep Singh v. Harveen Kaur reported in AIR 2017 SC 4417, for a motion for passing decree of divorce on the basis of mutual consent is mandatory or directory and whether such period can be relaxed in exceptional situations or circumstances, held that the period mentioned in Section 13B (2) of Act of 1955 is not mandatory but directory and it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

We have no hesitation in holding that the view taken by the Kerala High Court in the case of TOMY JOSEPH (supra) that the dictum laid down by the Apex Court in Amardeep Singh (supra) is applicable to a petition for divorce filed u/s 10A of the Act and on satisfaction of the conditions laid down in that decision, the Family Court can waive the period of six months stipulated u/s 10A (2) of the Act."

7. Sri Alok Saran and Sri Himanshu Suryavanshi, learned counsel for the Mitali Tiwari and Sri Ashok Kumar Singh, learned A.G.A.-I for the State have submitted that since the parties have already arrived at a settlement and there is no dispute that the parties have filed a petition under Section 13(B) of the Hindu Marriage Act for mutual divorce and the husband, namely, Himanshu Tiwari has also given Rs.5,00,000/- to the wife, namely, Mitali Tiwari and remaining amount will be given to the wife within ten days after the decree of divorce is passed. They have also confirmed this fact that Civil Contempt CAPL No.510 of 2022 "Himanshu Tiwari & Anr. Vs. Mitali Tiwari" filed by Himanshu Tiwari had already been dismissed as withdrawn by a co-ordinate Bench of this Court vide order dated 29.04.2024. Thus, they submit that no useful purpose would be served if the proceedings of the cases pending against

each other go on further before the trial court and the same may also be quashed by this Hon'ble Court.

8. Learned counsel for the parties have drawn the attention of this Court and placed reliance on the judgment of the Hon'ble Apex Court in support of their case.

(i) B.S. Joshi Vs. State of Haryana & Others 2003 (4) ACC 675.

(ii) Gian Singh Vs. State of Punjab 2012 (10) SCC 303.

(iii) Dimpey Gujral And Others Vs. Union Territory Through Administrator 2013 (11) SCC 697.

(iv) Narendra Singh And Others Vs. State of Punjab And Others 2014

(6) SCC 466.

(v) Yogendra Yadav And Others Vs. State of Jharkhand 2014 (9) SCC 653.

9. Summarizing the ratio of all the above cases the latest judgment pronounced by Hon'ble Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.;** reported in (2017) 9 SCC 641 and in paragraph no.16, the Hon'ble Apex Court has summarized the broad principles with regard to exercise of powers under Section 482 Cr.P.C. in the case of compromise/settlement between the parties which emerges from precedent of the subjects as follows:-

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 recognizes 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 arises 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."*

10. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab**, AIR 1960 S.C. 866, (ii) **State of Haryana Vs. Bhajanlal**, 1992 SCC (Cri.)426, (iii) **State of Bihar Vs. P.P. Sharma**, 1992 SCC (Cri.)192 and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another**, (Para-10) 2005 SCC (Cri.) 283.

11. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to

be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

12. With the assistance of the aforesaid guidelines, keeping in view the nature and gravity and the severity of the offence which are more particularly is private dispute and differences and a petition under Section 13(B) of the Hindu Marriage Act has already been filed for mutual divorce. It is deem proper and meet to the ends of justice. The proceeding of the cases filed between the parties be quashed by this Court.

13. Keeping in view the law laid down by the Hon'ble Apex Court in the above referred judgment and in view of the statement/compromise made by the parties and the observation made above, the entire proceedings of following cases are hereby **quashed** so far as it relates to the instant parties.

I. Criminal Complaint Case No.1882 of 2020, under Sections 323, 504, 506 I.P.C. “Madhu Tiwari Vs. Mitali Tiwari and 6 Ors.” filed by Madhu Tiwari pending before learned court of Judicial Magistrate-III, Lucknow.

II. Criminal Misc. Case No.179 of 2016, under Section 12 of Domestic Violence Act “Madhu Tiwari Vs. Munish Chandra Pandey & Ors.” filed by Madhu Tiwari pending before learned court of Additional Chief Judicial Magistrate-II, Lucknow.

III. Case No.22281/2017 alongwith entire State proceedings arising out of Crime No.101/2015, under Sections 498-A, 323, 406, 504, 506 I.P.C. and Section 3/4 of Dowry Prohinition Act lodged at Police Station Mahila Thana, District Lucknow “State Vs. Himanshu Tiwari & Ors.” pending before the learned court of Civil Judge, F.T.C. (CAW), Lucknow.

IV. Criminal Misc. Case No.789/2016 registered as 158/2016, under Section 12 of Domestic Violence Act “Mitali Tiwari Vs. Himanshu Tiwari & Ors”, filed by Mitali Tiwari alongwith minor

daughter Shambhavi Tiwari pending before learned court of Additional Chief Judicial Magistrate-II, Lucknow.

V. Application under Section 482 Cr.P.C. No.3121/2021 “Mitali Tiwari & Ors. Vs. State of U.P. and Anr.” filed by Mitali Tiwari alongwith her family members pending before this Court.

VI. Criminal Misc. Case No.1478/2015, under Section 125 Cr.P.C. “Mitali Tiwari & Anr. Vs. Himanshu Tiwari” filed by Mitali Tiwari alongwith daughter Shambhavi Tiwari pending before court of learned Additional Principal Judge-I, Lucknow.

VII. Criminal Complaint Case No.80963 of 2023, Police Station Madiayon, District Lucknow filed by Himanshu Tiwari pending before learned Court of Additional Chief Judicial Magistrate-II, Lucknow.

VIII. Criminal Revision No.687 of 2019 filed by Himanshu Tiwari pending before the learned Court of Additional Sessions Judge-I, Lucknow.

IX. Criminal Appeal No.115 of 2023, under Section 341 Cr.P.C. “Himanshu Tiwari Vs. State & Anr. Filed by Sri Himanshu Tiwari pending before learned court of Additional Sessions Judge-XV, Lucknow.

X. Civil Misc. Case No.210/2019, under Section 25 of Guardians and Wards Act, 1890 r/w Section 6(a) of The Hindu Adoptions and Maintenance Act, 1956 pending before learned court of Additional Principal Judge-I, Lucknow.

14. Learned Principal Judge, Family Court, Lucknow is also directed to decide the decree of divorce filed by the parties bearing Case No.1220 of 2024, under Section 13(B) of the Hindu Marriage Act within two months from the date of filing of certified copy of this judgment before it by diluting the period of motions in view of the judgment of Hon'ble Supreme Court in the case of **Amardeep Singh (Supra)** and Division Bench of this Court in the case of **Shalini Massey (Supra)**.

15. Learned Additional Principal Judge-I, Family Court, Lucknow is also directed to handover Rs.62,000/- to the wife, namely, Mitali Tiwari within 20 days from the date of pronouncement of this judgment, which has been deposited by Himanshu Tiwari on 29.04.2024 in Case No.1478/2015, under Section 125 Cr.P.C.

16. The husband, namely, Himanshu Tiwari is also directed to give Rs.5,00,000/- to the wife, namely, Mitali Tiwari within ten days after the decree of divorce under Section 13(B) of the Hindu Marriage Act is passed.

17. With the aforesaid directions, the instant applications under Section 482 Cr.P.C. stands **allowed** and the proceedings of the cases challenged in these applications as well as the reference of the cases given in paragraph No.13 of this judgment are hereby **quashed**.

Order Date :- 07.05.2024

Saurabh

(Justice Shamim Ahmed)