

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Writ Petition No. 24/2015**

1. Mr. DAJVIP V. PATKAR
son of Advocate Mr. Vilas M. Patkar,
aged 36 years, married, Advocate,
resident of “Chamundavan”, Plot B-19,
Housing Board Colony, Mapusa,
Bardez, Goa-403507.
2. Mr. JAYA V. PATKAR
Wife of Mr. Vilas M. Patkar,
aged 65 years, married, housewife,
resident of “Chamundavan”, Plot B-19,
Housing Board Colony, Mapusa,
Bardez, Goa-403507
3. Ms. DVIJPLE V. PATKAR
daughter of Mr. Vilas M. Patkar,
aged 34 years, unmarried, Judicial Officer,
resident of “Chamundavan”, Plot B-19,
Housing Board Colony, Mapusa,
Bardez, Goa-403507.

Petitioners**Versus**

1. STATE OF GOA,
Through the Ld. Advocate General,
having office at Panaji, Goa.
2. Mrs. VINA D. PATKR,
daughter of Mr. Vaman N. Ghode,
aged 31 years, married, housewife,
C/o Mrs. Vibha G. Nayak,
Sita Nivas, near Safy Masjid, Baina,
Vasco da Gama, Goa.

Respondents

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Mr. S.S. Kantak, Senior Advocate with Mr. Abhijeet Kamat, Advocate for the petitioners.

Mr. D. Lawande, APP for respondent no.1.

Mr. B. Khandeparkar, Advocate for respondent no.2.

**CORAM : F.M. REIS &
K.L. WADANE, JJ.**

DATE : 14/01/2016.

ORAL JUDGMENT: (Per F.M. REIS, J.)

1] Heard Mr. S.S. Kantak, the learned Senior Counsel appearing for the petitioners, Mr. D. Lawande, the learned Additional Public Prosecutor appearing for the respondent no.1 and Mr. B. Khandeparkar, the learned Counsel appearing for the respondent no.2.

2] The above petition, inter alia, seeks a direction to quash an F.I.R. No.502/2014 dated 03/11/2014, as well as to quash and set aside the proceedings based upon the F.I.R., including the charge-sheet filed on 05/03/2015.

3] After the matter was extensively heard, Mr. Kantak, the learned Senior Counsel appearing for the petitioners, upon instructions, points out that, at this stage, he will not press for any relief qua the

petitioner no.1 is concerned, though keeping all the contentions of the petitioner open to be examined by the learned Magistrate, in accordance with law. The learned Senior Counsel also points out that the issue challenging the constitutional validity of the provisions of the Dowry Prohibition Act, 1961 shall also not be pressed at this stage. But however, the contentions with that regard are also to be kept open. Mr. Kantak, the learned Senior Counsel appearing for the petitioners, in support of the above petition, has pointed out that the petitioner nos. 2 and 3 are being prosecuted allegedly for offences punishable under Sections 498-A, 323 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The learned Senior Counsel has pointed out that the petitioner no.1 is married to the respondent no.2 and the marriage took place way-back in the year 2008 and after the marriage, they were residing in the matrimonial house at Mapusa. The learned Senior Counsel further points out that, out of such marriage, a child was born and the relationship between the spouse was cordial till the year 2013 and thereafter there was a matrimonial dispute between the petitioner no.1 and the respondent no.2. The learned Senior Counsel further points out that during the said period, there were no allegations levelled by the respondent No.2 in connection with any alleged unlawful demands on account of dowry, either against the petitioner No. 2 or the petitioner No. 3 and only in the year 2014 a complaint was

lodged by the respondent no.2 before the Mapusa Police Station alleging that there was an assault on the respondent no.2 by the petitioner no.1. The learned Senior Counsel further points out that the respondent no.2 refused to subject herself to a medical examination and as such, such a complaint was registered as a N.C. Complaint. The learned Senior Counsel further points out that thereafter, there were matrimonial disputes between the petitioner no.1 and the respondent no.2, which resulted in the respondent No.2 proceeding to reside alone with her parents at Margao. The learned Senior Counsel further points out that thereafter a complaint was lodged before the Margao Police Station alleging harassment by the petitioner no.1 claiming that even the petitioner nos. 2 and 3 were ill-treating the respondent no.2. The learned Senior Counsel further points out that pursuant to the said complaint, the petitioner no.1 was called to the Police Station and in view of the intervention of the Women & Child Protection Forum, the dispute between the petitioner no.1 and the respondent no.2 was amicably settled wherein a memorandum was signed to the effect that the petitioner no.1, the respondent no.2 and the child would be living separately in a separate rented apartment and an inventory was also drawn, *inter alia*, putting on record the jewelery and other items which were mutually exchanged between the parties. The learned Senior Counsel further points out that after some time of living separately in

such rented premises, further matrimonial discord surfaced between the petitioner no.1 and the respondent no.2 which ultimately led to a situation wherein the respondent no.2 proceeded to reside with her parents. The learned Senior Counsel further points out that it is contended by the respondent no.2 that such discord arose because the petitioner no.1 arbitrarily and without the consent of the respondent no.2 had taken the child and was not traceable. The learned Senior Counsel further points out that thereafter a supplementary statement was recorded before Margao Police Station by the respondent no.2, *inter alia*, disclosing that the petitioner nos. 2 and 3 were demanding a specific sum of money for the purpose of purchasing a car. The learned Senior Counsel further points out that prior to that, there was another complaint alleging that there was harassment to the respondent no.2 by all the petitioners, including petitioner nos. 2 and 3. The learned Senior Counsel has taken us through the said complaint to point out that there are no specific details mentioned therein of the alleged incident, which according to the respondent no.2, could be attributed as an unlawful demand to meet the ingredients of provisions of Section 498-A of the Indian Penal Code. The learned Senior Counsel further submits that the supplementary statement is an afterthought, made before the Investigation Officer *inter alia* contending that two specific amounts were claimed by the petitioner nos. 2 and 3 with regard to the

payment of an amount towards parting gifts to the relatives at the time of marriage ceremony and a specific sum of money to purchase a car on the ground that the parents of the respondent no.2 had gifted a car to other sisters of the respondent no.2. The learned Senior Counsel further submits that another amount which was alleged to be an unlawful demand was for "Fula" (Baby shawl). The learned Senior Counsel further points out that a bold statement that a claim of Rs.25.00 lakhs (Rupees Twenty five lakhs) has also been recorded in the said complaint. The learned Senior Counsel further points out that the supplementary statement recorded by the respondent no.2 is clearly an afterthought and as such, on perusal of the second complaint lodged by the respondent no.2, there were no ingredients nor any case made out to register an F.I.R. for committing offence in terms of Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The learned Senior Counsel further submits that on a bare perusal of the memorandum signed at the time of the settlement of the dispute between the petitioner no.1 and the respondent no.2, it clearly reveals that there were no illegal demands referred to therein which were thereafter alleged by the respondent no.2 in the supplementary statement.

4] The learned Senior Counsel further points out that entire

alleged incident has arisen at Mapusa and, as such, registering an F.I.R. at Margao Police station itself is without jurisdiction and as such, the investigation carried out by the Investigating Officer deserves to be quashed and set aside. The learned Senior Counsel further submits that even assuming the alleged claim of the petitioner is accepted at a face value, it cannot be said that such claims are unlawful demands which can be attributed as a claim of dowry. The learned Senior Counsel further submits that merely claiming an amount in the context of a custom prevailing in the community cannot, by any stretch of imagination, be considered to be an unlawful demand which would meet the ingredients of the provision of Section 498-A of the Indian Penal Code. The learned Senior Counsel further points out that even seeking a gift, by itself, cannot be said to be relatable to an unlawful demand towards dowry. The learned Senior Counsel further points out that the Apex Court has clearly observed that roping into criminal proceedings the relatives of the husband cannot be easily accepted when the allegations made in the F.I.R. do not disclose a criminal offence in terms of Section 498-A, read with Section 34 of the Indian Penal Code. The learned Senior Counsel further points out that the petitioner no.2 is the mother-in-law of the respondent no.2; whereas the petitioner no.3 is the sister of the petitioner no.1, who is a Judicial Officer. The learned Senior Counsel further submits that the whole

exercise by the respondent no.2 is to falsely implicate the petitioner no.3 on some unfounded allegations only to disturb the social fabric of the petitioners, falsely. The learned Senior Counsel further points out that even considering the material attached to the charge-sheet filed by the Investigating Officer, there is no other material produced on record to justify or accept that there is any allegation or material which can infer that the ingredients of the provision of Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act have been satisfied.

5] The learned Senior Counsel further points out that in such circumstances, on the basis of the F.I.R., which has no particulars and on a charge-sheet which has no support in law, the question of subjecting the petitioner nos. 2 and 3 to undergo a criminal trial is totally vexatious and without any foundation. The learned Senior Counsel has, thereafter, taken us through the material on record and the statements recorded in support of the alleged complaint to point out that even in the statements of witnesses, there is no role attributed to the petitioner nos. 2 and 3. The learned Senior Counsel, as such, points out that the F.I.R., as well as the charge-sheet filed against the petitioner nos. 2 and 3, deserve to be quashed and set aside.

6] In support of the submissions, the learned Senior Counsel has relied upon the judgments of the Apex Court reported in **(2010)7 SCC 667** in the case of **Preeti Gupta and another Vs. State of Jharkhand and another**, **2013 ALL MR (Cri) 4288** in the case of **Milind s/o Taterao Kamble Vs. The State of Maharashtra and Anr.**, **(2003) 8 SCC 80** in the case of **Hira Lal and others Vs. State (Govt. of NCT), Delhi**, **(2001)(8)SCC 633** in the case of **Satvir Singh and others Vs. State of Punjab and another** and **(2007) 9 SCC 721** in the case of **Appasaheb and another Vs. State of Maharashtra**.

7] On the other hand, Shri B. Khandeparkar, the learned Counsel appearing for the respondent no.2, has vehemently opposed the above petition. The learned Counsel has pointed out that it is now well settled by the Apex Court that once the charge-sheet has been filed, the question of interference in an F.I.R., by this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India is not at all justified. The learned Counsel further points out that it is open for the petitioners to raise all the contentions before the learned Magistrate before framing of charge and as such, the question of examining the veracity of the statements recorded by the Investigating Officer, at this stage, would not at all be justified. The learned counsel in support of his submissions relied upon an unreported judgment of

the Apex Court dated 28th July, 2015 passed in Criminal Appeal No.1247 of 2012 in the case of **V.K. Mishra and Anr. Vs. State of Uttarakhand & Anr.**. The learned Counsel points out that on this ground alone the petition deserves to be rejected. Shri Khandeparkar, the learned Counsel appearing for the respondent no.2 further submits that it is now well settled that in cases in which there are no particulars recorded in the F.I.R., there is no bar for the complainant to furnish the particulars in a supplementary statement before the Investigation Officer. The learned Counsel further points out that the observations to this effect in the said judgment of the Apex Court would clearly support the contentions of the respondent no.2. The learned counsel further points out that the ingredients in terms of Section 498-A (2) of the Indian Penal Code have been clearly spelt out from the material on record. The learned Counsel further submits that the claims referred to in the supplementary statement, by itself, are unlawful and untenable and as such, making such demand, by itself would be an offence under Section 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. The learned Counsel further submits that the respondent no.2 has clearly explained the reasons for lodging the complaint belatedly as the respondent no.2 restrained herself from making such allegations to see whether the matrimonial dispute with the petitioner no.1 would solve. The learned Counsel has, thereafter,

taken us through the complaint which was registered at Mapusa Police Station wherein it is clearly recorded that the petitioner nos.2 and 3 have assaulted the respondent no.2. The second complaint filed at Margao Police Station has resulted in MOU. The learned Counsel further points out that all such demands made by the petitioners before marriage or after marriage depict an unlawful claim of dowry. The learned counsel further points out that a presumption be drawn in terms of Dowry Act, and the burden is on the petitioners to show that such demands were not towards dowry. The learned Counsel further submits that the veracity or correctness of the allegations made by the respondent no.2 during the course of the investigation cannot be examined by this Court at this stage, as the petitioners would get an opportunity to cross-examine the respondent no.2 as well as the witnesses of the respondent no.2 to examine the truthfulness or otherwise of the allegations made therein. The learned Counsel further submits that unless and until the trial is conducted, the question of drawing conclusions with regard to the veracity of the claim put forward by the respondent no.2 would not at all be justified. The learned counsel further submits that there are voluminous allegations made by the respondent no.2 as against the petitioner no.1, which according to him, would clearly meet the ingredients of an offence under Section 498-A of the Indian Penal Code and Section 4 of the

Dowry Prohibition Act. The learned Counsel as such points out that great injustice would be occasioned in case this Court interferes in the F.I.R. and the charge-sheet against the petitioner nos.2 and 3 and as such the petition deserves to be rejected.

8] Mr. Lawande, the learned Additional Public Prosecutor appearing for the respondent no.1 points out that the ingredients of Section 498-A of the Indian Penal Code cannot be said to have been satisfied as against the petitioner nos.2 and 3 are concerned. But however, according to the learned Additional Public Prosecutor, the petitioners can be prosecuted for offence punishable under Section 4 of the Dowry Prohibition Act.

9] We have given our thoughtful consideration to the rival contentions and we have also gone through the record. As already pointed out here-in-above, we are only examining the validity or otherwise of the F.I.R., as well as charge-sheet filed by the respondent no.1 against the petitioner nos. 2 and 3. Before we examine the rival contentions, we would like to put on record the observations of the Apex Court in the judgment in the case of **Preeti Gupta and another** (supra). The Apex Court has expressed its concern with regard to false implication of the husband and his relatives in the case under Section

498-A of the Indian Penal Code by the disgruntled wife and that such a tendency cannot be allowed to flourish. The Apex Court has recorded that it is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. The Apex Court has further noted that in such matrimonial disputes the Court should be cautious to examine whether the relatives of the husband are falsely roped in such alleged offences. The Apex Court has observed at paragraph nos. 33, 34, 35 and 36 thus:

“33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under [section 498-A](#) as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. *Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*

35. *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.*

36. *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”.

10] Keeping in mind the above observations of the Apex Court, we shall proceed to examine the facts of the present case.

11] On perusal of the F.I.R.,, based on the complaint dated 3/11/2014, we find that the allegations against the petitioners No.2 and 3 are that, “ *On certain occasions my husband, mother in law & sister-in-law would tell me to bring my mother’s gold as my mother expired 2 years ago and as I do not have a brother; My husband and her family members started harassing after my marriage; My husband, mother-in-law & sister-in-law would several time ask me to bring money from my father to buy a new car. When I would refuse they would tell me that your both elder sisters are provided with car why are you not provided with car; Every now and then from 16th November, 2008 till 1st September 2013 my husband, mother-in-law & sister-in-law would demand my father to give them money or else blackmail my father that they would send me home; Thus my husband namely Dajvip Patkar, my mother-in-law Mrs. Java Patkar and my sister-in-law Miss Dvijple*

Patkar soon after my marriage till date at my matrimonial house at Ganeshpuri, Mapusa Goa subjected me to cruelty with their common intention and even demanded to bring dowry of cash worth Rs.25 lakhs from parents.” On the basis of such allegations, the FIR came to be registered. On going through such allegations, we find that there are no specific details or dates and time when such alleged claims were put forward by the petitioners No.2 and 3. Such averments against the petitioners No.2 and 3 are omnibus in nature and no specific role in this regard has been ascribed either to the petitioner No.2 or the petitioner No.3, nor the time and the date of the alleged assaults, have been specified. As such, on perusal of the said written complaint, we find that there are no precise allegations against the petitioner Nos. 2 and 3 regarding alleged harassment and cruelty for dowry. The alleged claim of jewellery of the mother of the respondent No.2 was after her death when such right of inheritance had, admittedly, devolved upon the respondent No.2, as well as the petitioner No.1 herein and, as such, cannot be attributed to be an alleged unlawful demand to meet the ingredients of the provision of Section 498-A of the Indian Penal Code.

12] On perusal of the Supplementary Statement recorded on 6th November, 2014, we find that the allegations therein are that 8 days'

prior to their marriage, her in-laws phoned her father and told him that they had forgotten to tell her parents that her father should arrange for return gifts for their family members. It is further alleged that they had already bought for them and told her father to give cash of Rs.50,000/- which her father gave to them. The other allegation is that when she was four months pregnant, she was told to get Rs.60,000/- from her parents by her husband petitioner No.1, the petitioner No.2 and the petitioner No.3 to make her five months "*Fula*" and when she refused, she was beaten up with cloth hanger and thrown out of the house at around 11 pm.. Further allegations in the supplementary statement is that the petitioners No.2 and 3 and the petitioner No.1 had also demanded mother's gold who had thereafter expired on 7th May, 2012 and that when she refused to do so, the petitioners No.1 would abuse her and her family members in filthy language at the instance of the petitioners No.2 and 3 and the petitioner No.1 would abuse and lock her in the room. Another allegation is that when the petitioner No.1 came to know during the proceedings in Civil Suit No.263/13 that the Bank Locker containing the mother's gold was closed, all the petitioners mentally harassed her. There are also allegations that Rs.25.00 lakhs were demanded by the petitioners, including the petitioner No.1. She also contended that the petitioners No.2 and 3 used to pass comments on her and her family members and they used to instigate the petitioner

No.1 to harass the respondent No.2.

13] On going through the said allegations, including the FIR registered against the petitioner No.2 and 3, as well as the material placed along with the charge-sheet, we find that there are no specific and credible allegations with necessary particulars against the petitioners No.2 and 3. During the course of hearing of the above petition, Mr. Khandeparkar, learned Counsel appearing for the respondent No.2 has highlighted two specific allegations in the supplementary statements which, according to him, could be attributed to be a demand for dowry. One of the allegations is for a demand of “*Fula*” and the other is with regard to the demand for payment of return gifts at the time of the marriage. We would examine whether such demand, by itself, could be an unlawful demand for dowry to meet the ingredients for committing an offence under Section 498A of the IPC read with Section 4 of the Dowry Prohibition Act. On going through the said complaint lodged by the respondent No.2, we find the allegations against the petitioners No.2 and 3 are omnibus, without any specific particulars as against them which would meet the ingredients of committing an offence under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act. In this connection, the Apex Court in very similar circumstances in the judgment reported in **(2009) 10 SCC**

184 in the case of **Neelu Chopra and another vs. Bharti** has observed at paragraph nos. 9, 10, and 11 thus:-

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.

11. The High Court has merely mentioned that the allegation in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the jewellery. This

is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them. Insofar as the offence under [Section 498A](#) IPC is concerned, we do not find any material or allegation worth the name against the present appellants. All the allegations appear to be against the Rajesh”.

Taking note of the observations in the said Judgment and the view taken upon going through the complaint and other material on record, we find that there is no credible material to proceed against the petitioners No.2 and 3 with necessary particulars of the role played by each of them in commissioning the alleged offence and, as such, the petitioners No.2 and 3 should not be made to suffer the ignominy of a criminal trial, based on such material.

14] The Apex Court in the judgment reported in **AIR 2000 SC 2324**, in the case of **Kans Raj vs. State of Punjab** has, *inter alia*, observed that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband, are required to be proved beyond

reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry. The Apex Court has further observed that a tendency has, however, developed for roping in all relations of the in-laws of wives in the matter of dowry death which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

15] The Apex Court in the judgment reported in **2014 (8) SCC 273**, in the case of *Arnesh Kumar vs. State of Bihar* has observed at para 4 thus :

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relative arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

Applying the principles, as enunciated by the Apex Court herein above to the facts of the present case, the bare statements against the said petitioners in the complaint by the respondent No.2 and the said supplementary statement, are only omnibus allegations, short of even basic details levelled against the petitioners No. 2 and 3 which do not disclose committing an offence under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act and, as such, suffering a criminal trial by the petitioners No.2 and 3 on the basis of such allegations would be an abuse of process of law. The alleged cruelty, are matrimonial skirmishes due to normal wear and tear of a matrimonial house.

16] Apart from that, the records reveal that the respondent No.2 married the petitioner No.1 on 27/8/2008 and as per religious rites, the respondent No.2 came to reside at the house of the petitioner No.1's father at Mapusa. It is also alleged by the petitioner No.1 that investments were made in the name of the respondent No.2. There was also litigation initiated at the instance of the sister of the respondent No.2 in the year 2013, against the father of the respondent No.2 which resulted in strained relationship between the father of the respondent No.2 and the said sister. There are also criminal proceedings initiated

by the said Vrinda Kamat in November, 2013, against her father and the petitioner No.1 was representing her as her Advocate. Thereafter, the respondent No. 2 lodged a NC complaint somewhere in July 2014 against the petitioners at Mapusa Police Station and subsequently, reestablished contact with her father. On 15/9/2014, the respondent No.2 apparently left the house of the petitioner No.1 with the minor son. A complaint was, thereafter, lodged by the respondent No.2 at Margao Police Station against all the three petitioners, alleging demand for dowry and cruelty. The respondent No.2 has, apparently, made an express statement on 7th October, 2014 that she has no complain against all the three petitioners and, accordingly, the petitioner No.1 took the respondent No.2 and his minor son to a rented apartment. The petitioner No.1 filed a divorce petition against the respondent No.2 on 31/10/2014 and on 3/11/2014, the respondent No.2 went to Margao Police Station and lodged the said FIR under Section 498-A, read with Section 323 of the IPC against all the three petitioners. Though the respondent No.2 had made vague allegations in the first complaint at Margao Police Station for demand of dowry, nevertheless, a settlement was arrived at wherein there was a solemn statement by the respondent No.2 that she has no complain against the petitioners No.2 and 3. The FIR which is impugned in the present petition is, in fact, lodged only after the divorce petition was filed by

the petitioner No.1 against the respondent No.2. For nearly six years from the time of their marriage, no material has been produced by the respondent No.2 to show that at any point of time during such period there was an unlawful demand on account of dowry by the petitioners No.2 and 3. It is also to be noted that though the complaint was lodged at the Mapusa Police Station, the respondent No.2 refused to subject herself for a medical examination. These facts, would clearly suggest, that there was a matrimonial discord between the petitioner No.1 and the respondent No.2 which led to the respondent No.2 leaving the house and staying with her father at Margao. The main cause in filing such a complaint appears to be because the petitioner No.1 had taken the child without informing the respondent No.2. The records produced along with the charge-sheet, as well as the statements of the witnesses of the respondent No.2, do not disclose any specific details about any claim put forward by the petitioner No.2 or the petitioner No.3 towards dowry.

17] As has been pointed out herein above, Mr. Khandeparkar, learned Counsel appearing for the respondent No.2 has emphasized on two demands by the petitioners No.2 and 3, as referred to in the supplementary statement which, according to him, are unlawful

demands for dowry which would be sufficient enough to prosecute the petitioners No.2 and 3 for the offence punishable under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act. One, as pointed out herein above is towards “*Fula*” and the other towards the cost of return gifts at the time of marriage. The marriage took place in the year 2008 and for the first time, such allegations were made only in the year 2014, after divorce proceedings were initiated by the petitioner No.1 against the respondent No.2. In this connection, the Apex Court in the case of **Satvir Singh and others vs. state of Punjab and another**, (supra) has observed at para 21 thus :

“ **21.** Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. Hence the

dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.”

Taking note of the said observations, even assuming that the said two claims by the petitioners No.2 and 3, alleged by the respondent No.2 are accepted, such customary payments in connection with birth of a child or other ceremonies prevalent in different societies, are not enveloped within the ambit of “*dowry*”. Hence, we find that the said allegations cannot, in any way, be treated to be in connection with the marriage.

18] The observations of the the Apex Court in the case of **Appasaheb and another Vs. State of Maharashtra (supra)**, at para 11 would be relevant to examine whether an offence under Section 4 of the Dowry Prohibition Act can be culled out from the material on record. The Apex Court has observed at para 11, thus :

“**11.** In view of the aforesaid definition of the word “dowry” any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection

with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See *Union of India v. Garware Nylons Ltd.* (1996) 10 SCC 413 and *Chemical and Fibres of India Ltd. v. Union of India*, (1997) 2 SCC 664.) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for “dowry” as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.”

The alleged demand referred to herein above for the purpose of purchasing some items, as such, cannot be termed to be “*dowry*”. The alleged demand of Rs.25,00,000/- referred to in the supplementary statement was not made by the petitioners No.2 and 3, but by the petitioner No.1, as contended by the learned Counsel appearing for the respondent No.2. The alleged claim of cruelty, as referred to in the complaint cannot, in any way, lead to hold that Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, would be applicable in the facts of the present case.

19] In the facts of the present case, the observations of this Court in the case of **Milind s/o Taterao Kamble Vs. The State of Maharashtra and Anr. (supra)**, at paras 15, 17 and 19, would be relevant, which read thus :

“15. None of the statements specifically refers any demand by the Applicant Milind. All are general statements, which, in a settled legal position, have been deprecated time and again.

17. This is one of such classical case, where we find that the proceedings under Section 498-A of I.P.C. are brazenly used to corner the Applicant Milind, since he is already a employed person, enjoying position as a

Judge and if someone is maligns him, naturally serious recourse would be taken by his superiors/appointing authorities.

19. In fact this was the basic reason to prosecute him. One should avoid cock a snook policy and hectoring. In the situation, prosecution, qua the Applicant Milind, is quashed and set aside. Criminal Application No.4390 of 2012 allowed. Rule made absolute to the extent as above.”

20] Considering that the allegations against the petitioners No.2 and 3 are based on unfounded allegations, we find that the question of proceeding with the criminal proceedings against the petitioners No.2 and 3 for offences punishable under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act, would not arise at all. The ultimate object of justice is well settled to be to find out the truth and punish the guilty and protect the innocent.

21] As already pointed out herein above, the respondent No.2 failed to subject herself for a medical examination and there are no credible allegations in the material produced on record to show that the petitioners No.2 and 3 have caused hurt to the respondent No.2.

22] With regard to the contention of Mr. Kantak, learned

Senior Counsel appearing for the petitioners challenging the territorial jurisdiction of the Investigating Officer to proceed with the investigation and file the charge-sheet, we are of the view that considering the view taken by us, as referred to herein above, such aspects need not be gone into and, as such, the contentions with that regard are expressly left open.

23] The reliance by Mr. Khandeparkar, learned Counsel appearing for the respondent No.2 on the Judgment of the Apex Court, in the case of **V.K. Mishra and Anr. Vs. State of Uttarakhand & Anr.** (supra), is not applicable to the facts of the present case. In the case before the Apex Court, a brother of the victim had lodged an FIR where no particulars of cruelty or demands were specified. In such circumstances, the Apex Court found that the details furnished in the subsequent statement can be looked into. In the present case, respondent No.2, the wife herself had filed the earlier complaint and thereafter made allegations in the supplementary statement only after the FIR was registered, a settlement was worked out which, thereafter, failed and a divorce suit was filed by the petitioner No.1 against the respondent No.2 and, as such, the supplementary statement of the respondent No.2 is clearly an afterthought and an exaggerated version, which are not credible. The other Judgment relied upon by Mr.

Khandeparkar, learned Counsel appearing for the respondent No.2, reported in **2015 SCC OnLine SC 218**, in the case of **Taramani Parakh vs. State of M.P. & Ors.**, would not be applicable to the facts of the present case as, for the reasons stated herein above, we have come to the conclusion that the uncontroverted allegations as could be seen from the record of the case, and the documents submitted in support thereof do not, *prima facie*, establish the offence, as the basic ingredients of the criminal offence against the petitioners No.2 and 3 are not satisfied. As such, we find that the FIR as well as the charge-sheet filed against the petitioners No.2 and 3 deserve to be quashed and set aside.

24] In view of the above, we pass the following order:-

- (i) F.I.R. No.502/2014 dated 3.11.2014 and the charge-sheet No.1/2015 dated 5.3.2015 as against petitioner nos. 2 and 3 only, are quashed and set aside.
- (ii) The petition of the petitioner No.1 stands dismissed as withdrawn, subject to the above.
- (iii) All contentions of both the parties, as against petitioner no.1, on merits, are left open to be examined on its own merits.
- (iv) Rule is made absolute accordingly.

K.L.WADANE, J

F.M.REIS, J.

At this stage, Mr. Khandeparkar, learned Counsel appearing for the respondent No.2 seeks leave to appeal before the Apex Court. We find no reason to grant any such leave and, consequently, such prayer stands rejected.

K.L.WADANE, J

F.M.REIS, J.

mukund/ssm.