

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.14524 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.263 of 2016 (Crime No.106 of 2016 of Women Police Station, Saroornagar, Cyberabad, Telangana State) on the file of the XIV Metropolitan Magistrate, Cyberabad, L.B. Nagar, Ranga Reddy District, for the offences punishable under Sections 498-A, 323 & 506 of I.P.C.

The petitioner is the accused and husband of the defacto complainant/second respondent. The defacto complainant who is the wife of the petitioner lodged a complaint with the Women Police Station, Cyberabad making serious allegations against her husband that she was subjected to cruelty for her failure to meet his illegal demands to sell the property and caused injuries on her body.

On the strength of the complaint, the police registered a crime for the offences punishable under Sections 498-A, 323 & 506 I.P.C in Crime No.106 of 2016. Later, the investigating agency took up investigation and filed charge sheet before XIV Metropolitan Magistrate, Cyberabad.

The petitioner, accused in C.C.No.263 of 2016 for the offences punishable under Sections 498-A, 323 & 506 I.P.C challenged the proceedings in C.C.No.263 of 2016 on the following grounds:

1. The charge sheet was filed on the presumption and assumption that though no single witness gave statement under Section 161(3) of Cr.P.C. to attract the offences punishable under Sections 498-A, 323 & 506 I.P.C. Therefore, continuation of

the said proceedings in C.C.No.263 of 2016 would affect the petitioner adversely.

2. The serious allegations made in the charge sheet that the defacto complainant was physically, mentally and economically harassed and abused her in filthy language are false and baseless and without any specific contents, the Court cannot proceed further.
3. He also denied the allegation of throttling her daughter, causing injuries on the body of the defacto complainant, twisting her hand are baseless and failure to pay alleged monthly maintenance of Rs.20,000/- would not attract any offence punishable under the sections referred supra.
4. The allegations made in the complaint dated 14.05.2016 are totally contrary to the present charge sheet and the allegations made in the complaint and the investigation would not disclose the ingredients to constitute an offence under the Sections 498-A, 323 & 506 I.P.C. But, the investigating agency falsely filed the charge sheet, obviously for different reasons, but there is absolutely no material against the petitioner to proceed against him. Therefore, filing of charge sheet without any material and taking cognizance by the Magistrate is nothing but abuse of process of Court and prayed to quash the proceedings in C.C.No.263 of 2016.

The defacto complainant/2nd respondent filed counter contending that her marriage with the petitioner was performed in a temple at Shivam Road on 14.06.1998 when she was prosecuting her LLB studies. As her father-in-law has become very sick and very serious/bad health condition, marriage was

performed. Later, her father in law died on 30.03.1999. The petitioner is an agriculturist and though he has possessed sufficient agricultural land, started different businesses without any purpose and sustained loss in all businesses. The petitioner was forcing the defacto complainant to obtain loan and maintain the house and to bring up the children, since she took sufficient time to establish her office as an Advocate.

The defacto complainant specifically contended that her husband is not able to get any income from the businesses, he insisted to sell the land given to her as pasupu kumkuma and when the defacto complainant did not accept the same, the petitioner threatened with dire consequences and also threatened to harm the children, as such in those circumstances, she filed O.S.No.376 of 2015 on the file of Principal Senior Civil Judge, Bhongiri. The defacto complainant was not permitted to enter into her parents house and her parents stopped talking to the respondent even on any occasion or in the marriages or other ceremonies of the relatives.

It is stated in the counter that the petitioner was not providing food and clothing and subjected the defacto complainant to both physical and mental cruelty when she did not agree to fulfill the illegal demands.

Along with the counter affidavit, the petitioner also filed several documents to show that she suffered injuries due to cruel treatment in the hands of petitioner, denied material allegations in the petition, while reiterating the allegations in the charge sheet.

During argument, learned counsel for the petitioner contended that the allegations made in the charge sheet would not constitute an offence either punishable under Sections 498-A, 323 & 506 I.P.C. The defacto complainant being an Advocate practicing in High Court influenced the police and lodged compliant making serious allegations. But during investigation, the police could collect no evidence against the petitioner for the above offences, still, the police filed charge sheet against the petitioner for the offences punishable under Sections 498-A, 323 & 506 I.P.C. Thus, it is nothing but abuse of process of law, since continuation of the proceedings in C.C.No.263 of 2016 would adversely affect the reputation of the petitioner and he prayed to quash the proceedings in C.C.No.263 of 2016.

Learned counsel for the petitioner placed reliance on the judgment of the Apex Court in **Bhaskar Lal Sharma and another v. Monica and others¹, Swapnil and others v. State of Madhya Pradesh², Preeti Gupta and another v. State of Jharkhand and another³ and Undavalli Narayana Rao v. State of Andhra Pradesh⁴.**

Per contra, learned counsel for the respondent while contending that the jurisdiction of this Court under Section 482 can be exercised to quash the proceedings only in case where the allegations made in the charge sheet would not constitute an offence *prima facie* on its face value. When there is material available on record supported by the statements recorded by the investigation

¹ (2014) 3 Supreme Court Cases 383

² (2014) 13 Supreme Court Cases 567

³ (2010) 7 Supreme Court Cases 667

⁴ (2009) 14 Supreme Court Cases 588

agency under Section 161(3) of Cr.P.C, the proceedings cannot be quashed.

Learned counsel for the respondent placed reliance on the judgments of the Apex Court which learned counsel for the petitioner relied upon.

Considering rival contentions and perusing the material available on record, the sole point that arose for consideration is as follows:

Whether the allegations made in the charge sheet on its face value would constitute offences under Section 498-A, 323 & 506 of I.P.C. If not, whether the proceedings in C.C.No. 263 of 2016 pending on the file of XIV Metropolitan Magistrate, Cyberabad, L.B. Nagar, Ranga Reddy District be quashed by exercising jurisdiction under Section 482 of Cr.P.C.

POINT:

Section 482 of Cr.P.C saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote

justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

To give effect to any order under Code means, the first class of order, which the section embraces are orders that may be necessary to give effect to any order under this Court. When a Court has authority to make an order, it must also have the power to carry out the order into effect. The power to enforce obedience to the mandates of the Court necessarily springs from the very existence of the authority to issue the mandates and, if that power is not expressly given by the statute, it must be deemed to be inherent in the Court, vide **Emperor v. Sukhdeo**⁵.

To prevent abuse of the process of any Court, the authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice. It would be an abuse in the process of the Court to allow a suitor to litigate over again the same question which has been already decided against him. The High Court would, in the exercise of its inherent jurisdiction, reject an application for the transfer of a criminal case, where such an application based upon the same facts had already been refused. The words “process” is a general word meaning, in effect, anything done by the Court. In exercise of the powers under this section the High Court would be justified to quash

⁵ 1930 Lah 465 31 Cr LJ 482

the proceedings if it finds that the institution or continuance of criminal proceedings amounts to abuse of the process of the Court or if quashing of those proceedings would otherwise secure the ends of justice. Where there is no material before the Magistrate on the basis of which he can issue process against the accused to stand trial, it will be gross abuse of the process of the Court if the accused is put to trial, hence the proceedings should be quashed at the threshold. Similarly, where it is not shown that there is any abuse of process of the Court, the proceeding will not be quashed. The jurisdiction of the High Court in quashing the complaint or the first information report is very limited. The High Court is justified in quashing the complaint when no offence is made out on the allegations made in the complaint or the documents accompanying it per se.

The words used in under Section 482 of Cr.P.C “or otherwise to secure the ends of justice, the High Court has been given powers under this section, in addition to what it possesses under its Charter and Letters Patent, to interfere in order to secure the ends of justice. If the High Court feels that the ends of justice require that an order should be made in an application, although the application is not contemplated by the Code the High Court will entertain the application and make the necessary orders to secure the ends of justice. The Court while deciding a law point may decide it rightly or wrongly. An application under this section will not lie on the ground that the Court has decided a point of law incorrectly and has resulted in gross injustice to the applicant. Vide **Ramji Singh v. State**⁶. Thus, the inherent powers of the Court can be exercised sparingly in extraordinary circumstances and with great circumspection.

⁶ 1972 Cr LJ 1545 (A)

The scope of Section 482 of Cr.P.C was time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in **State of Haryana v. Bhajan Lal**⁷, seven guidelines were laid down and they are as under:

(a) 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;

(b) 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;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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;

(f) 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

⁷ 1992 Supp. (1) SCC 335

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;

(g) where a criminal proceeding is manifestly attended with malafide 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

Similarly, in **Madhavrao Jiwaji Rao Scindia & anr. etc. vs. Sambhajirao Chandrojirao Angre & ors. etc.**⁸, the Apex Court laid down a specific test to be applied by the Court as to whether the uncontroversial allegations as made *prima facie* establish the offence. In the above judgment, it is stated that the inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide **Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Ors.**⁹; **Ganesh Narayan Hegde vs. S. Bangarappa & Ors.**¹⁰; and **M/s Zandu**

⁸ 1988 AIR 709

⁹ AIR 1990 SC 494

¹⁰ (1995) 4 SCC 41

Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque & Ors.¹¹).

It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide **State of Haryana vs. Bhajan Lal** (referred supra), **Janata Dal vs. H.S. Chowdhary and Others**¹², **Rupan Deol Bajaj (Mrs.) and Another vs. Kanwar Pal Singh Gill and Another**¹³, and **Indian Oil Corp. vs. NEPC India Ltd. and Others**¹⁴.

Those guidelines though elliptic followed by the Court while exercising power under Section 482 of Cr.P.C, the power of the Court is to decide whether the allegations made in the charge sheet on its face value would constitute an offence and meticulously cannot go into the details of the allegations to conclude that whether the case would end in acquittal or conviction at the stage of deciding a petition under Section 482 Cr.P.C. Therefore, keeping in mind the limited scope of jurisdiction of this Court, I would like to decide the dispute before me based on the allegations made in the charge sheet and other material.

In the charge sheet filed by the investigating agency, there are specific allegations about subjecting the defacto complainant to cruelty and the relevant portion of the charge sheet is extracted hereunder for better appreciation of the case:

“From the year 2014 onwards, he has been harassing for selling her property i.e. open house plot purchase from her

¹¹ AIR 2005 SC 9

¹² 1992 (4) SCC 305

¹³ 1995 (6) SCC 194

¹⁴ 2006 (6) SCC 736

earnings in the year 2005 on his name. He wanted to sell out the same for his personal needs i.e. vims and fans. And also he wanted to sell out the agricultural property for his vicms and fans. He wants to construct the function hall in the village for his vicms and fans benefit only, for that he insisted her and her children for signing on sale agreement, executed in favour of third party. They bluntly rejected his proposal on that day onwards, he developed grudge on her and her children. He made lot of efforts for sale of the above property but he failed. Boring grudge, on 12.8.15 he throttled her daughter's neck. She saved her from his clutches. Immediately, he attached on her with her office chair and the chair wheel crushed her ribs. Even though he is not satisfied with that activity, he collected her office manuals and burnt them with match box. At that time, she and her daughter threw water on manuals. Even though he is not satisfied with his activities. Again he twisted her right hand, at that time her daughter was not in a position to maintain/control him. She tried fro 100 dial. At that time, he himself went out. He never paid single pie for family expenses and children education. Moreover, he wants money from her monthly i.e. Rs.20,000/-. If she will not pay the same to him, he wants to blame her in the society as a prostitute. She is not in a position to bear all these things done by him. He started some abusive words by telephoning to her relatives. They intimated to her by phone. Thereafter they made all efforts for peaceful going of family. Even though he continued his abusing in the flats and he obstructed her Court work.

On 5.5.16 at around 8.30 AM he came to flat and abused in filthy language. The same was recorded in her phone. She has vacation court on that day she went to start to Court and obstructed her work and twisted her right wrist due to that swelling her wrist thereafter verified and banded given saline to her by her doctor. Very next day on 06.05.16 she received phone call from Saroornagar PS, he gave a complaint against her in the said PS. On that day onwards, she kept quite due to her children examinations. On 14.05.16 he came to her flat, abused and threatened her and her daughter. Her daughter has EAMCET examination on 15.05.16, due to which she closed the door. Even though he continued his harassment, due to that she called police. She and her children have life threat from him and his agents. Moreover, he threatened her. If she doesn't pay Rs.20,000/- per month to him, he wanted to perform second marriage. He always threatened her in some manner, without paying single pie to the welfare of family and children education. Moreover, he wants to sell out the properties which they are having as ancestral property and she acquired property on his name. He kept all documents with him and threatening her and her children to end their lives. So stating requested to take necessary action."

During investigation, the investigating agency examined as many as six witnesses including the defacto complainant Bhagyasri and five neighbours. On the basis of the statements recorded by the police during investigation under Section 161(3), the police filed charge sheet having satisfied that there is material to proceed against the petitioner for the said offences.

Learned counsel for the petitioner drawn the attention of this Court to the statement of defacto complainant M. Bhagyasri recorded under Section 161 (3) of Cr.P.c and she clearly stated about the cruelty she meted in the hands of the petitioner on different occasions. One Vijaya, neighbour was examined by the investigating agency and she stated before the police about the disputes between the petitioner and his wife, the defacto complainant and used to hear the quarrel occasionally between them, while expressing ignorance about other personal affairs of both. Similarly, Rajamani also disclosed that the petitioner and the defacto complainant quarreled with each other and she also stated that she does not know the reason for the quarrel. Similarly Anita Sampati also stated the same, but in the statement of one Mareddi Ranga Reddy, father of the defacto complainant admitted that the marriage of the defacto complainant was not performed with the petitioner (Sanjeev Reddy) with their consent. But, about 2 years back the defacto complainant filed a suit demanding partition of the property and abused him in filthy language and split on his face. But these statements are of no use. One Gundu Venkatesh, neighbour stated about the quarrel between the petitioner and respondent without disclosing the reason for such quarrel. Therefore, there is consistency in the statements of the witnesses examined by the investigating agency under Section 161(3). The petitioner and the 2nd respondent/ defacto complainant used to quarrel occasionally and the petitioner used to visit the house once or twice in a week from his native place to lead marital life with her. But, none of the witnesses disclosed about the reason for quarrel between them.

In view of the judgments referred supra in **Mrs. Dhanalakshmi; Ganesh Narayan Hegde** and **M/s Zandu Pharmaceutical Works Ltd. & Ors.** cases (referred supra), this Court while deciding a petition under Section 482 of Cr.P.C need not meticulously go into the evidence available on record collected during investigation by the police and if the allegations made in the charge sheet on its face value would constitute an offence, the Court can decline quashing the proceedings. Therefore, the statements recorded by the investigating officer under Section 161(3) cannot be gone into at this stage, even though they are taken on its face value. It is evident that the petitioner and the 2nd respondent used to quarrel occasionally. But they did not disclose the reason for such quarrel. In such a case, the reason for such quarrel can be established only by adducing evidence before the Court.

The petitioner challenged the proceedings firstly on the ground that the charge sheet was filed on the presumptions and assumptions that, no single witness stated about subjecting the defacto complainant to cruelty in connection with the crime under Section 161(3). On the basis of the presumptions and assumptions by the witness, inference cannot be drawn that the petitioner and the defacto complainant were quarrelling in connection with dowry. Further, the reason for such quarrel cannot be decided at this stage and since it is a disputed question of fact. Therefore, on this ground, the proceedings cannot be quashed.

The second and third grounds urged before this Court is that, the allegations made in the charge sheet are false and baseless. But,

the falsity or truth in the allegations cannot be decided without recording evidence and consequently, such contention is not open to the petitioner at this stage while deciding the quashability of the proceedings in the charge sheet. Therefore, consequently, on this ground, the proceedings in charge sheet cannot be quashed.

The defacto complainant also contended that the petitioner did not pay Rs.20,000/- of maintenance. But, that would not attract the offence punishable under Sections 498-A of IPC on the face of allegations itself. But the other allegations regarding subjecting her to cruelty by twisting her hand, causing injuries on her body on its face value, if proved, would constitute an offence under Sections 323, 506 & 498-A of I.P.C.

The last ground urged before this Court is that the allegations made in the charge sheet would not constitute an offence punishable under Sections 323, 506 & 498-A of I.P.C and requested to quash the proceedings.

Section 498-A deals with subjecting the wife to cruelty by husband or relative of husband for her failure to fulfill the illegal demands for payment of dowry. The explanation thereto defined what amounts to cruelty. "Cruelty" means (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus, subjecting the defacto complainant to cruelty for sale of the property which is purchased by the defacto complainant and insisting her to subscribe her signature would certainly fall within the ambit of cruelty under Clause (b) of Section 498-A IPC. The charge sheet disclosed the allegation that the defacto complainant was subjected to cruelty by causing injuries on her body for her failure to subscribe her signature and signature of the daughter for sale of the property. The truth or otherwise in it cannot be decided at this stage, since it is a disputed question of fact.

The demand of sale of property or valuable security even if made subsequently to the marriage would fall within the definition of cruelty under the explanation to Section 498-A of I.P.C and it would also fall within the definition of dowry under Section 2 of Dowry Prohibition Act which reads as follows:

2 Definition of 'dowry'. —In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—
 (a) by one party to a marriage to the other party to the marriage; or
 (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before 1 [or any time after the marriage] 2 [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. 3 [***]
 Explanation II.— The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

Therefore, causing injuries on the body for her failure to meet the illegal demands to subscribe the signature and signature of her daughter to sell the property certainly amounts to cruelty.

Section 498A deals with punishment for the offence subjecting woman by the concept of husband or relative of husband of a woman subjecting her to cruelty. It states that whoever, being the husband or the relative of the husband of a woman, subjects such woman to

cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purpose of this section, "cruelty" means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

The basic essential ingredients to attract Section 498A are:

- a) The woman must be married
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

A bare glance of the section shows that the word 'cruelty' covers any or all of the following elements:

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

The fact that the 2nd respondent is a wife is not in dispute. The contention of the 2nd respondent is that she was subjected to cruelty for her failure to meet the illegal demand to subscribe the signature for sale of property. Thus, the clear allegations in the charge sheet

that she was subjected to cruelty for her failure to meet the illegal demand on its face value would constitute an offence punishable under Section 498-A and that apart, the serious injuries caused on the body of defacto complainant/2nd respondent would also create an additional piece of allegation and it is sufficient to constitute an offence under Sections 498-A & 323 of I.P.C. If, there is no evidence to establish that the wife was meted out ill-treatment, or harassment for failure to meet the illegal demands, then the complaint can be quashed.

The Apex Court in **Pawan Kumar v. State of Haryana**¹⁵ has gone to the extent of holding that cruelty or harassment need not be physical but mental torture can also be treated as cruelty. If, that is the situation, allegations made in the charge sheet would directly constitute the offence punishable under Section 498-A.

The Apex Court in **Kuppusetti Subbharao @ Subramaniam v. State of A.P.**¹⁶ held that the very thrust of offence under Section 304-B is dowry death. The evils sought to be curbed are distinct, and separate from persons committing offending acts. The Court went on to say that there could be no impediment in law to liberally construe words or expressions relating to persons committing offence.

The Supreme Court also held that while deciding the cases under Section 498 and 304-B, the Court has to keep in mind the intention of the legislature in incorporating such provision and decide the matter

¹⁵ AIR 1998 SC 958

¹⁶ 2009 Cri LJ 3480 (SC)

If the above principle is applied to the present facts of the case, the petitioner is not entitled to claim any relief in the present petition to quash the proceedings for the offences punishable under Section 498-A, 323 & 506 I.P.C.

In view of the law declared by the Court referred above, it is clear that the allegations in the charge sheet would on its face value constitute an offence punishable under Sections 498-A, 323 & 506 of I.P.C.

The other contention of the petitioner is that the allegations would not constitute an offence punishable under Section 323. But, along with the counter affidavit, learned counsel for the respondent filed several documents which would go to show that the petitioner caused injuries on the body of the 2nd respondent which would fall within the ambit of Section 323 of I.P.C. Similarly, the other Section 506 deals with criminal intimidation and it is as follows:

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

if threat be to cause death or grievous hurt, etc.-- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which, may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

In the present facts of the case, the petitioner threatened to kill the 2nd respondent, if she did not meet the illegal demands made by the petitioner. That itself is suffice to constitute an offence punishable under Section 506 I.P.C

Learned counsel for the petitioner in support of his contention placed reliance on a judgment of the Apex Court in **Bhaskarlal**

Sharma's case (referred supra), where the Supreme Court considered what amounts to cruelty and ingredients of Section 498-A in para 29 and proof of an offence punishable under Section 498-A I.P.C. In para 37 of the judgment, the Supreme Court held as follows:

“Ex facie no case has been made out under Section 498A of the IPC so far as the appellants are concerned. The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498A of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A. Similarly her allegations that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498A. Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC.”

Here, the petitioner being a husband subjected the defacto complainant to cruelty for her failure to cooperate for sale of the property subscribing her signature and also caused injuries on her body. Therefore, the facts are distinguishable from the facts of the above judgment and the same cannot be applied to the present facts of the case.

Learned counsel for the petitioner also drawn attention to the judgment of the Supreme Court in **Sushil Kumar Sharma vs. Union of India & Ors**¹⁷ where the Apex Court reiterated the object of Section 498 holding that the object of which Section 498-A was introduced is ample, reflected in statements and objects and reasons while enacting the criminal law second amendment and in paragraphs 10 & 19 of the said judgment, the Supreme Court held as follows:

"10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the

¹⁷ (2005) 6 SCC 281

number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed.

In paragraph 40 in **Bhaskarlal Sharma's** case, the Supreme Court discussed about quashability of the case by relying on **Bhajanlal's case** held as follows:

"The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also this Court are well known. The parties have relied upon the decisions of this Court in *State of Haryana vs. Bhajan Lal* [1992 (Supp.) 1 SCC 335]. We may notice the categories 1, 3, 5 and 7 mentioned in Para 102 of the said decision, which are as under:

"(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.

(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.

(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.

(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."

Even if the same principle is applied to the present facts of the case, allegations made in the charge sheet would directly constitute an offence on its face value, subject to proof during trial. Hence, the principle laid down in the above judgment has no direct application to the present facts of the case.

In **Pashaura Singh v. State of Punjab and another**¹⁸, the Supreme Court held that subjecting woman to cruelty by husband and his relatives and in the absence of proof of demand of dowry or harassment by accused, High Court found that only allegation made in FIR was the appellant-accused and his family members started harassing appellant's wife for not bringing more dowry. But there was no demand for dowry, nor was there any specific entrustment of dowry articles to accused as alleged in FIR and held that offence under Section 498-A is not made out.

Thus, in view of the principle laid down in the above judgment, in the absence of any allegations that the defacto complainant was subjected to cruelty to meet the illegal demand of dowry and as the definition of dowry is wide and it is in inclusive definition, it would also lead to grave injustice.

In view of the principle laid down in the above judgment, this Court must be careful in exercising jurisdiction under Section 482 and such power cannot be used either to stifle the legitimate prosecution or to harass the relatives of the husband unnecessarily. But, in the present case, husband is the petitioner and wife is the defacto complainant. However, at this stage, this Court need not

¹⁸ (2010) 11 Supreme Court Cases 749

advert to the evidence available on record, in view of the judgments referred supra.

Learned counsel for the respondent while contending that the word 'cruelty' is defined under Hindu Marriage Act and was also under Section 498-A and if the meaning of cruelty in the exception of Section 498-A is taken into consideration, the acts attributed in the charge sheet would constitute an offence, since the power of the Court is to look into the material, but not other material meticulously and drawn attention of this Court to the judgment rendered by the Supreme Court in **Shobha Rani v. Madhukar Reddi**¹⁹.

The Supreme Court in the said judgment discussed about cruelty under Section 498-A & Section 13 of Hindu Marriage Act. In paragraph 9 of the judgment, the Apex Court observed that a new dimension has been given to the concept of cruelty. Explanation to Sec. 498-A of I.P.C provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty.

On strict adherence to the word cruelty in the explanations to Sections 498-A, the allegations made in the charge sheet would constitute an offence. He also relied on the judgment which the petitioner relied on **Bhaskarlal's** case (referred supra) in support of

¹⁹ (1988) 1 Supreme Court Cases 105

his contention regarding the power of the Court to quash the proceedings and cruelty.

On an overall consideration of the law declared by the Apex Court, it is clear that if there are specific allegations against the husband and his relatives, on its face value would constitute an offence punishable under Sections 498-A, 323 & 506 IPC, the Court can exercise its inherent jurisdiction under Section 498-A to quash the proceedings to stifle the legitimate prosecution. Since, the power of the Court while deciding application under Section 498-A is to look at the allegations made in the charge sheet in its entirety without advertng to the other material meticulously to quash the proceedings.

But, in the present case, the allegations made in the charge sheet against the petitioner/husband on its face value would constitute an offence punishable under Sections 498-A, 323, 506 IPC, the truth of otherwise in the allegations can be decided only after adducing evidence and if it is quashed at this stage, it amounts to stifling the legitimate prosecution of the husband for the serious offence punishable under Section 498-A.

Therefore, I find the allegations made in the charge sheet on its face value would constitute offences punishable under Sections 498-A, 323 & 506 IPC and thereby, I find no merit in the petition to quash the proceedings at this stage and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 22.11.2016
SP