

\$~20

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

Decided on: 16th July, 2018

+ CRL.M.C. 381/2016 and Crl. M.A. 1618/2016

ARUN JAIN & ORS

..... Petitioners

Through: Mr. Prabhjit Jauhar, Mr.
Rosemany Raju, Ms. Aishwarya M. and
Ms. Upasana Goel, Advocates

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the petition at hand prayer is made for the order dated 28.09.2015 of the court of the Metropolitan Magistrate taking cognizance for the offences under Sections 498A, 406, 34 IPC and issuing summons to the petitioners as accused on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted on conclusion of investigation into first information report no.20/14 of police station Crime Against Women Cell, Nanak Pura to be set aside primarily on the ground that the allegations in the case are unfounded.

2. It was argued on behalf of the petitioners that the FIR of the case was lodged on 31.10.2013 after the marriage of the parties (solemnized on 01.11.1996) had been dissolved by a decree of divorce under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 granted on 04.04.2013.

3. Having heard the counsel for the petitioner and having gone through the record, this court finds the petition to be misconceived. The criminal court of competent jurisdiction has found sufficient grounds to proceed against the petitioners on the basis of evidence gathered by the police during investigation into FIR. The contention of the petitioners, at best, raises questions of facts which cannot be adjudicated upon in the jurisdiction under Section 482 Cr. PC. Though in a slightly different context explaining the parameters of the jurisdiction of the High Court in exercising its jurisdiction under Section 482 Cr. PC, the Supreme Court in the case of *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.*, (2008) 13 SCC 678 observed thus :-

“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are

not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

(emphasis supplied)

4. Reserving the contentions raised by the petitioner in the petition at hand, which may be agitated in the trial before the court where the matter is pending, in answer to the charge, this court declines to interfere under Section 482 Cr. PC.
5. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

JULY 16, 2018

yg