

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.26929 of 2015
and Crl.MP.Nos.1 and 2 of 2015

1. Rakesh Raja
2. Renugopal
3. Hemavathy

... Petitioners/Accused 1 to 3
Vs.

1. State rep by
The Inspector of Police,
W8 All Women's Police Station,
Thirumangalam, Chennai-101. ...1st Respondent/Complainant

2.Mahalakshmi ...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the case in CC.No.470 of 2014, on the file of the Chief Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : Mr.S.R.Varun Karthik.

For Respondent : Mr.T.Shanmugarajeswaran

GA(Crl.side) for R1.

Mr.H.Maruthiraj,
Legal aid counsel for R2.

O R D E R

(This case has been heard through video conference)

This petition has been filed to call for the records relating to the case in CC.No.470 of 2014, on the file of the Chief Metropolitan Magistrate, Egmore and to quash the same.

2. The brief facts of the prosecution case is that on 29.01.2013 the second respondent/defacto complainant preferred a complaint before the first respondent/police stating that she got married to the first petitioner on 29.08.2012 at Chennai and the marriage was conducted in a very grand manner by spending Rs.30lakhs and her parents had given 75 Soverigns of gold jewels, 3kgs of Silver articles and other house hold articles as Sreedhanam, in addition to that they have also gifted 16 Soverigns of Gold jewels to A1/first petitioner. After marriage, the first petitioner/A1 had left to Australia for his

job on 15.09.2012 and later the defacto complainant/second respondent mortgaged her jewels for Rs.3lakhs to get VISA and after obtaining VISA the complainant went to Australia on 18.10.2012 by taking 25 Sovereigns of Gold jewels with her. The further averment is that the first petitioner/A1 tortured her by demanding Rs.5lakhs and A1 also consumed alcohol and harassed her. Further, the first accused had informed that his father/2nd petitioner wanted to start a business and that an amount of Rs.5lakh is required and had asked the second respondent/defacto complainant to get money from her father. He had further told her to handover all the jewels to his parents and the parents of the first petitioner also harassed her. The second respondent/defacto complainant had further stated that the first petitioner/A1 had harassed her only based on the instigation of his parents/the 2nd and 3rd petitioners at Chennai, thereby the defacto complainant suffered mentally and physically, further she was sent back to Chennai from Australia to her parents house on 16.01.2013. Further, when the defacto complainant along with her parents had gone to the house of the petitioners 2 and 3 at Mogappair, they had prevented her to enter the house stating if only she pays Rs.5lakhs and bring the remaining jewels they would allow her to live with her son and that the 1st petitioner was acting as per the instructions of his parents and that his parents were responsible for the split and that they were taking steps to leave to Australia and arrange for second marriage for A1. Based on the complaint an enquiry was conducted in CSR/25/W8/AW8PS/2013 and thereafter a case was registered in Cr.No.4 of 2013 under Section 498A, 406 IPC and Section 4 of TamilNadu Prohibition of Harassment of Women Act 2005 and Section 4 and 6 of Dowry Prohibition Act. The first respondent sent the complaint to the Dowry Prohibition Officer and thereafter during the course of investigation examined five witnesses and filed final report against the accused for the offences under Section 498A and 406 IPC r/w.4 of TamilNadu Prohibition of Harassment of Women Act 2005 and Section 4 and 6 of Dowry Prohibition Act. The case was taken up in CC.No.470 of 2014 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. This petition has been filed to quash CC.No.470 of 2014.

3. The learned counsel for the petitioner would submit that the marriage between the first petitioner and the defacto complainant was solemnised on 29.08.2012 at Chennai as per Hindu Rites and customs. At the time of marriage the petitioner was employed at Australia and immediately after the marriage, the first petitioner had taken the defacto complainant to Australia on Tourist Visa and thereafter the first petitioner had also applied for spouse Visa when she was in Australia. While they were in Australia some misunderstanding arose between the first petitioner and the defacto complainant. The defacto

complainant returned back to Chennai and filed a false complaint against the petitioners. A case of misunderstanding had been exaggerated and a false complaint has been given for offences under Section 498A and 406 IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2005 and Section 4 and 6 of Dowry Prohibition Act. Taking into consideration the materials on record, no case for offences under the provisions alleged are made out against the accused. Even as per the statements recorded from the witnesses, no case can be made out against the petitioners for offences under Section 498A IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2005 and Section 4 and 6 of Dowry Prohibition Act. There is absolutely no averment or allegation of subjecting the defacto complainant to cruelty within the meaning of Section 498A IPC. Further, it is the admitted case of the prosecution that the entire articles and the amounts were with the custody of the defacto complainant and her parents and thereby there was no case of entrustment of any property and offence under Section 406 IPC cannot be made out.

4. The learned counsel for the respondent would further submit that the marriage was solemnised on 29.08.2012 and the complaint was made on 29.01.2013 within five months of marriage. Though the complaint was initially registered in CSR/25/W8/AWPS/2013, the respondent without referring the complaint to the District Social Welfare Officer/Dowry Prohibition Officer, on the instance of the father of the defacto complainant who was a Deputy Collector in the State Government and an influential person immediately got the case registered for the offence under Section 498A and 406 IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2005 and Section 4 and 6 of Dowry Prohibition Act. After registration of the case, the complaint was referred to the District Social Welfare Officer/Dowry Prohibition Officer for enquiry and she had after due enquiry concluded that there was no demand of dowry. Since, the report of the District Social Welfare Officer/Dowry Prohibition Officer was against the case of the prosecution, the 1st respondent without adding her as a witnesses and without annexing the report has filed the final report. In the meantime, the petitioners were harassed by various complaints given by the defacto complainant to different authorities. Complaints were preferred by the defacto complainant against the petitioners before the Tamil Nadu State Women's Commission, Chennai and before the Judicial Magistrate, Alandur under the Domestic Violence Act in CMP.No.5993 of 2013. Later the 1st petitioner filed a petition for divorce in OP.No.3587 of 2013 before the Principal Family Court, Chennai on the ground of cruelty and it was decreed on 17.06.2015. Subsequently, after the divorce the defacto complainant did not proceed further and she got married to one Arun Govindan on

20.01.2016 at Chennai and she had migrated to Australia. Subsequently, the marriage between the defacto complainant and the said Arun Govindan has also been dissolved by the Federal Circuit Court of Australia vide Divorce order in File No:(P) MLC9333/2017 dated 19.12.2017. Meanwhile the proceedings against the petitioners filed by the defacto complainant under the Domestic Violence Act before the Judicial Magistrate, Alandur in CMP.No.5993 of 2013 was dismissed for non prosecution on 18.09.2015.

5. The learned counsel would further submit that thereafter the 1st petitioner got married to one Vamsaroopa Surapareddy on 22.11.2015 at Chennai and is now settled at Australia and a girl child was born to them on 03.01.2018 and the child is now three years old. The 1st petitioner also reliably understands that the defacto complainant after her second divorce is also married again and settled in Australia. The learned counsel would further submit that a malicious complaint of demand of dowry and harassment has been filed under the heat of the moment over the issues without proper deliberations only with an ulterior motive for wreaking vengeance to spite the petitioner due to private and personal grudge. The trial Court had taken the same on file.

6. The learned counsel for the petitioner would further submit that much water has flown down the bridge and now the 1st petitioner and the defacto complainant have started separate lives on their own and the defacto complainant had not proceeded further with the complaint and she has also not appeared before this Court despite service of notice on her. The learned counsel for the petitioner would further contend that even taking into consideration the entire material on record, the offences against the petitioners are not made out and allowing the proceedings to continue would be nothing but harassment and abuse of process of Court and that ends of justice requires that the proceedings ought to be quashed. He would submit that the case of the petitioners fall within categories (1) and (7) enumerated in the case of State of Haryana V. Bhajan lal reported in 1992 (1) SCC 335.

7. Further in support of his contention he would rely on the following judgments of the Hon'ble Apex Court as follows :-

1. Preeti Gupta and another v. State of Jharkhand and others reported in (2010) 7 SCC 667.
2. Varala Bharath Kumar and another v. State of Telengana and another Preeti Gupta and another v. State of Jharkhand and others reported in (2017) 9 SCC 413.
3. Vineet Kumar and others v. State of Uttar Pradesh and another reported in (2017) 13 SCC 369 wherein the Hon'ble Apex Court had referred and relied on

its earlier judgments in Sunder Babu and others v. State of Tamil Nadu reported in (2009) 14 SCC 244 and Priy Vrat Singh and others v. Shyam Ji Sahai reported in (2008) 8 SCC 232.

4. State of Haryana and others v. Bhajan lal reported in 1992 (1) SCC 335.

8. Per contra, the learned Government Advocate (crl.side) would submit that the case has been registered based on the complaint given by the defacto complainant. The marriage between the defacto complainant and the first petitioner was solemnised on 29.08.2012 at Chennai. As per defacto complainant, the parents of the defacto complainant had given 75soverigns of gold, 3kgs of Silver and other house hold articles as Sreedhana and addition to that they have also given 16soverigns of Gold jewels and 15lakhs worth about diamonds to the 1st petitioner. The first petitioner had taken the defacto complainant to Australia under Tourist visa and later he had sent her back to India on the guise of calling her after obtaining spouse visa. Later on the instigation of his parents, the first petitioner had demanded Rs.5lakhs to start business. The parents of the defacto complainant had spent Rs.5lakhs at the time of Betrothal and they had also spent Rs.10lakhs for conducting the marriage in a grand manner.

9. In reply the learned counsel for the petitioner would submit there is absolutely no material to show that the first petitioner demanded any dowry to conduct the betrothal or the marriage. Even as per the statement recorded from the witnesses, after the marriage the entire jewels and the other sreedhana articles remained in the custody of the parents of the defacto complainant and neither the first petitioner nor the petitioners 2 and 3 have in possession of the materials belonging to the defacto complainant and thereby there was absolutely no entrustment of any material to make out offence of criminal breach of trust.

10. Despite service of notice, through Court and privately the second respondent/defato complainant did not appear before the Court. Thereby this Court directed the 1st respondent police to intimate the second respondent about the pendency of the case and listing of the matter for hearing. It was reported by the first respondent that the second respondent was residing out of the country and intimation was given to her father who is also a witness in this case and that he has not shown any interest in the case. Since the second respondent did not appear despite intimation this Court appointed Mr.Maruthiraj, legal aid counsel to represent the second respondent.

11. Mr.Maruthiraj, learned legal aid counsel appearing for the second respondent/defacto complainant would submit that as per the available material, the 1st petitioner before his marriage was employed at Australia and there was demand of dowry before the marriage and that the marriage was conducted by the parents of the defacto complainant after spending considerable amount. After the marriage the 1st petitioner had taken the defacto complainant to Australia on tourist visa. There he had harassed the defacto complainant. Whiles, the 2nd and 3rd petitioners have demanded a sum of Rs.5lakhs for starting a business from the father of the defacto complainant. Later under the guise of obtaining a spouse visa, the defacto complainant was sent back to India, the 2nd and 3rd petitioners have prevented the defacto complainant to enter their house demanding the amount for their son and later abused her and her father stating that if only the amount of Rs.5 lakhs is paid, the defacto complainant would be allowed to live with their son. However, he would submit that the materials furnished by the petitioners would go to show that the marriage between the 1st petitioner and the defacto complainant was dissolved and thereafter she had married one Arun Govindan on 20.01.2016 at Chennai and she had migrated to Australia and subsequently, the marriage between the defacto complainant and the said Arun Govindan had also been dissolved by the Federal Circuit Court of Australia vide Divorce order in File No:(P)MLC9333/2017 dated 19.12.2017.

12. Heard the counsels. Before advertng to the issues in this case, it is necessary to refer to the relevant paragraphs of the judgment referred to by the counsel for the petitioner.

13. The Hon'ble Apex Court in Preeti Gupta and another V. State of Jharkhand and another reported in (2010) 7 SCC 667 has held as follows :

"20. This Court had occasion to examine the legal position in a large number of cases. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

21. This Court in *State of Karnataka v. L. Muniswamy* [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

22. In *Madhu Limaye v. State of Maharashtra* [(1977) 4 SCC 551 : 1978 SCC (Cri) 10] a three-Judge Bench of this Court held as under: (SCC p. 551)

"... In case the impugned order clearly brings out a situation which is an abuse of process of court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code even assuming that the invoking of the revisional power of the High Court is impermissible."

23. This Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] observed in SCC para 7 as under: (SCC p. 695)

"7. The legal position is well settled that when a prosecution at the initial stage is asked to

be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

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32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bonafide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern."

14. In Varala Bharath Kumar and another V. State of Telengana and another reported in (2017) 9 SCC 413 the Hon'ble Apex Court has held :

"5. Respondent 2, though served, has chosen to remain absent. We have heard the learned counsel for the rival parties who are present and perused the record. Having carefully perused the first information report, as well as, the contents of the charge-sheet, we find that the ingredients of Sections 498-A and 406 IPC are not forthcoming. The entire story narrated by the complainant does not attract the aforementioned provisions, as there has not been any dowry demand of the appellants or harassment to the second respondent. Before proceeding further, it would be relevant to note the provisions of Sections 498-A, 405 and 406 of the Penal Code, which read thus:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the

husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "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."

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the

wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

6. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the first information report/the complaint or the outcome of investigation as found in the charge-sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; 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, the power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised.

7. While exercising power under Section 482 or under Article 226 in such matters, the court

does not function as a court of appeal or revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

8. We are conscious of the fact that, Section 498-A was added to the Code with a view to punish the husband or any of his relatives, who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Keeping the aforementioned object in mind, we have dealt with the matter. We do not find any allegation of subjecting the complainant to cruelty within the meaning of Section 498-A IPC. The records at hand could not disclose any wilful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.

9. The ingredients of criminal breach of trust are also not forthcoming from the records as against the appellants. The allegations contained in the complaint and the charge-sheet do not satisfy the definition of criminal breach of trust, as contained in Section 405 IPC. In view of the blurred allegations, and as we find that the complainant is only citing the incidents of unhappiness with her husband, no useful purpose

will be served in continuing the prosecution against the appellants. This is a case where there is a total absence of allegations for the offences punishable under Section 498-A and Section 406 IPC. In the matter on hand, the allegations made in the first information report as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offences punishable under Sections 498-A and 406 IPC against the appellant-accused. So also the uncontroverted allegations found against the appellants do not disclose the commission of the offence alleged and make out a case against the accused. The proceedings initiated against the appellants are liable to be quashed.

15. In Vineet Kumar and others v. State of Uttar Pradesh and another reported in (2017) 13 SCC 369 the Hon'ble Apex Court has held :

"26. A three-Judge Bench in State of Karnataka v. M. Devendrappa had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6 :

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with

caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

27. Further in para 8 the following was stated: [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89

"8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335"

28. In *Sunder Babu v. State of T.N.* [*Sunder Babu v. State of T.N.*, (2009) 14 SCC 244, this Court was considering the challenge to the order of the Madras High Court where application was under Section 482 CrPC to quash criminal proceedings under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 CrPC taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in *Bhajan Lal* case and held that the case fell within Category 7. The Apex Court relying on Category 7 has held that the application under Section 482 deserved to be allowed and it quashed the proceedings.

29. In another case in *Priya Vrat Singh v. Shyam Ji Sahai*, this Court relied on Category 7 as laid down in *State of Haryana v. Bhajan Lal*. In the above case the Allahabad High Court had dismissed an application filed under Section 482 CrPC to quash the proceedings under Sections 494, 120-B and 109 IPC and Sections 3 and 4 of the Dowry Prohibition Act. After noticing the background facts and parameters for exercise of power under Section 482 CrPC the following was stated in paras 8 to 12: (*Priya Vrat v. Shyam Ji Sahai*, (2008) 8 SCC 232)

"8. Further, it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in

February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of Respondent 1."

16. In State of Haryana v. Bhajan Lal and others reported in (1992) 1 SCC 335 the Hon'ble Apex Court has held :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

17. Now while perusing the materials on record in this case, the allegations in the complaint is that the marriage between the defacto complainant and the 1st petitioner was solemnised on 29.08.2012 at Chennai and the marriage was conducted in a very grand manner by spending a sum of Rs.30lakhs, at the time of marriage her parents had given 75 Soverigns of Gold jewels, 3kgs of Silver article and other house hold articles as Sreedhana. In addition to that they have also gifted 16 Soverigns of Gold jewels to A1/1st petitioner and after the marriage, the 1st petitioner had left to Australia for his employment on 15.09.2012 and later the defacto complainant had gone to Australia after mortgaging part of her jewels for Rs.3lakhs. The further allegation is that the 2nd and 3rd petitioners had demanded a sum of Rs.5lakhs from the parents of the defacto complainant for starting a business and thereafter, she was sent back to India in the guise of obtaining spouse visa and she came

back to her parent's house in India and that the 2nd and 3rd petitioners prevented the defacto complainant from entering the matrimonial house demanding a sum of Rs.5lakhs for starting business for the first petitioner. Thereafter, the defacto complainant had given a complaint. Admittedly as per the statements recorded from the witnesses the jewels gifted to the defacto complainant during her marriage were in her custody only and that she had only mortgaged jewels and taken Rs.3lakhs for obtaining visa to Australia. Further, in this case after registration of the case, the matter had been referred to the District Social Welfare Officer/Dowry Prohibition Officer for enquiry. In the meanwhile, the defacto complainant had preferred a complaint before the State Women's Commission and had also preferred a complaint before the Judicial Magistrate, Alandur under the Domestic Violence Act. The 1st petitioner had filed a petition for divorce on the ground of cruelty, the marriage had been dissolved on 17.06.2015, thereafter the defacto complainant has not proceeded further. The complaint filed by the defacto complainant before the State Women's Commission and the Judicial Magistrate, Alandur were also closed on account of non appearance of the complainant. Subsequently, the defacto complainant had also married one Arun Govindan on 20.01.2016 and the defacto complainant migrated to Australia and the marriage between the defacto complainant and the said Arun Govindan has been dissolved by the Federal Circuit Court of Australia vide Divorce order in File No:(P)MLC9333/2017 dated 19.12.2017. The 1st petitioner has also got married with one Vamsaroopa Surapareddy and he has also got a child. In the meanwhile, the 1st petitioner has completed the investigation and filed final report. Despite service of notice, the defacto complainant has not shown any interest in prosecuting the case. Further, it is reported that the defacto complainant is settled abroad and that her father had also not shown any interest in pursuing the matter.

18. In such circumstances, this Court perused the complaint and the materials available in CC.No.470 of 2014 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. Perusal and analysis of materials including the statements show that the entire sreedhana articles and other house hold articles were left back in the custody of the defacto complainant and there are no materials to show that first petitioner or his parents are holding the properties. Further, the allegations against the petitioners in respect of demand of dowry and matrimonial cruelty by the petitioners are also vague and blurred. The reading of the complaint does not expose any cruelty within the meaning of Section 498A IPC. Further, the materials on hand do not disclose any wilful conduct on the part of the petitioners which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury

or danger to life, limb or health (whether mental or physical). Further, the allegations of demand of dowry by the petitioners prior to the marriage, during the marriage or after the marriage is also vague. The ingredients of criminal breach of trust are also not forthcoming from the records as against the petitioners. Since, it is the admitted case of the defacto complainant that the entire properties and jewels were left in the custody of the defacto complainant. The allegations contained in the complaint and the charge sheet do not satisfy the definition of criminal breach of trust, as contained in Section 405 IPC. The allegations made in the FIR as well as the materials collected do not prima facie constitute the offence alleged against the petitioners. Further, after the complaint to the police, the defacto complainant has also filed complaints against the petitioners before the State Women's Commission and before the Judicial Magistrate, Alandur under the Protection of Women from Domestic Violence Act. Since, the defacto complainant did not follow up the cases, they were also dismissed for non prosecution. It could be seen that the complaint has been filed out of matrimonial misunderstanding in the heat of the moment over certain trivial issues without proper deliberations. It is also brought to the notice of this Court that subsequently the marriage between the first petitioner and the defacto complainant had been dissolved by the Principal Judge, Family Court, Chennai in OP.No.3587 of 2013 on the ground of cruelty on 17.06.2015. Subsequent to the divorce, the defacto complainant did not proceed further and later she has got married to one Arun Govindan on 20.01.2016 at Chennai and she got migrated to Australia. Thereafter, the marriage between the defacto complainant and the said Arun Govindan has been dissolved by the Federal Circuit Court of Australia. Since, the defacto complainant did not pursue the complaint filed before the Judicial Magistrate, Alandur, it was dismissed for non prosecution on 18.09.2015. After 2015, the defacto complainant had also not proceeded further. Now both parties have started their own lives and happily married again and are settled in different countries. The defacto complainant has not appeared before the Court, despite notice. Further it is also reported by the first respondent that the father of the defacto complainant who is a witness in this case has also not shown any interest in this case.

19. Under such circumstances, this Court is of the opinion that allowing the petitioners to face the prosecution would be an exercise in futility amounting to abuse of process of Court. Further this Court is also of the opinion that this case squarely falls under the categories (3) and (7) in Paragraph 102 of Bhajan Lal case (cited supra). As stated above, since no useful purpose will be served in allowing the proceedings to be continued, it requires interference of this Court by exercising jurisdiction under section 482 Cr.PC.

20. In view of the above, the CrI.OP.No.26929 of 2015 stands allowed and consequently, the proceedings pending against the petitioners in CC.No.470 of 2014 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai stands quashed. Consequently, connected miscellaneous petitions are closed.

21. Mr.H.Maruthiraj, learned legal aid counsel appointed by this Court for the second respondent/defacto complainant is entitled for remuneration as per rules.

s/d-

Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Metropolitan Magistrate, Egmore, Chennai.
2. The Public Prosecutor, High Court, Madras.
3. The Tamil Nadu State Legal Services Authority,
High Court, Madras.
- 4.The State Women's Commission and The Judicial Magistrate,
Alandur.
- 5.The Principal Judge, Family Court, Chennai

+3 Ccs to Mr.S.R.Varun Karthik, Advocate sr 15369.

CrI.O.P.No.26929 of 2015

PP(CO)
SP(09/07/2021)

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