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Thus, by carrying out an amendment, the applicants/accused are also seeking quashing of the proceedings bearing RCC No.263 of 2021 pending before the Judicial Magistrate, First Class, Sakri.

3. The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos.1 to 3 to the extent of the charge under sections 498-A read with 34 of the Indian Penal Code is concerned.

4. Leave granted to the extent of the charge under section 498-A read with section 34 of the Indian Penal Code. Application of applicant no.1) Kalim Shaikh Munaf (husband of respondent no.2), applicant no.2) Suriyabee @ Biba Shaikh Munaf (mother-in-law of respondent No.2) and applicant no.3) Munaf Shaikh Haji Abdul Kadar (father-in-law of respondent no.2) is hereby dismissed as withdrawn to the extent of the charge under section 498-A r/w 34 of the Indian Penal Code only.

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5. The learned counsel for the applicants submits that, though names of the applicant nos.4 to 11 are mentioned in the FIR, however, allegations as against them are general in nature, without attributing any specific individual role to each of them and also without quoting any specific incident. Learned counsel submits that the allegations so far as the charge under section 498-A r/w 34 of the IPC is concerned, the same has been made against applicant no.1) Kalim Shaikh Munaf (husband of respondent no.2), applicant no.2) Suriyabee @ Biba Shaikh Munaf (mother-in-law of respondent No.2) and applicant no.3) Munaf Shaikh Haji Abdul Kadar (father-in-law of respondent no.2), whose application seeking quashing of the FIR and the proceedings to the extent of section 498-A r/w 34 of the IPC is withdrawn.

6. Learned counsel for the applicants submits that applicant no.4 is the brother-in-law and applicant no.5 is his wife. The applicant no.6 is married sister-in-law, whose marriage was performed way back in the year

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2001. She is residing with her husband at Jalgaon. Applicant No.7 is another married sister-in-law, whose marriage is performed way back in the year 2000 and she also resides at Jalgaon alongwith her husband. Learned counsel submits that applicant nos.8 and 9 are the parents of applicant no.5, applicant no.10 is the sister of applicant no.5 and applicant no.11 is brother of applicant no.5. So far as the applicant nos.8 to 11 are concerned, since respondent no.2/informant has made allegations about performing of second marriage by applicant no.1/husband with applicant no.10, applicant nos.8 to 11 have been arraigned as accused persons in connection with the present crime to the extent of the charge under section 494 of IPC.

7. Learned counsel for the applicants submits that the allegations as against these applicants are only to the extent that they used to remain in contact with each other on mobile and instigate applicant no.1/husband to ill-treat respondent no.2 for various reasons. Learned counsel submits that so far as the charges under

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section 406, 420, 323, 504, 506 r/w 34 of the IPC are concerned, the allegations against all the applicants to that extent are absurd and vague.

8. Learned counsel for the applicants submits that so far as the charge under section 494 of the IPC is concerned, parties are Muslims. Learned counsel submits that the fact of the second marriage being void is sine-qua-non for the applicability of section 494 of IPC. The Muslim Male can have four wives at a time. However, if the Muslim male marries a fifth wife, he can very well be prosecuted under section 494 of the IPC since the fifth marriage is void. Learned counsel submits that one of the most important ingredient to attract the offence under section 494 of the IPC is that second marriage should be void.

9. Learned counsel for the applicants, in order to substantiate his submissions, placed reliance on the following cases :-

- i. Geeta Mehrotra and another Vs State of Uttar Pradesh and another reported in (2012) 10 Supreme Court Cases 741.

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- ii. Preeti Gupta and another Vs. State of Jharkhand and another reported in (2010) 7 Supreme Court Cases 667.
- iii. Taramani Parakh Vs. State of Madhya Pradesh and others, reported in (2015) 11 SCC 260.
- iv. Dr. Surajmani Stella Kujur Vs. Durga Charan Hansdah and another reported in (2001) 3 Supreme Court Cases 13.
- v. A.S.Nazar and others Vs. Jissa and another reported in 2017 SCC online Ker 17001.
- vi. Venugopal K. Vs. Union of India and others reported in 2015 online Ker 798.
- vii. Jafar Abbas Rasoolmohammad Merchand Vs. State of Gujarat and another reported in 2015 SCC online Guj. 5552.
- viii. Tarif Rashidbhai Qureshi Vs. Asmabanu reported in 2020 SCC online Guj 711.

10. Learned counsel for respondent no.2 submits that names of the applicants are mentioned in the FIR with the specific role attributed to each of them. Respondent no.2 was subjected to cruelty on account of non-fulfillment of demand of the cash amount. She was not spared during the pregnancy period and even after the birth of the child. It is for the trial court to find out as to whether section 494 r/w 34 of the IPC is attracted against the applicants. There is a triable case against

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all the applicants. There is no substance in this criminal application. The same is liable to be dismissed.

11. Learned counsel for respondent no.2, in order to substantiate his submissions, placed his reliance on the judgment in a case of Anwar Ahmad Vs. State of Uttar Pradesh and another reported in 1991 Cri.L.J. (1991).

12. We have also heard the learned APP for the Respondent no.1-State.

13. We have carefully gone through the contents of the complaint and also perused the charge-sheet. It appears that the allegations have been made mainly against applicant no.1/husband, applicant no.2/father-in-law and applicant no.3/mother-in-law, whose application seeking quashing of the FIR and the proceedings to the extent of section 498-A read with section 34 of the IPC is concerned, is dismissed as withdrawn. So far as applicant nos.4 to 11 are concerned, allegations as against them are general in nature, without attributing any specific individual role to each of them and even

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without quoting any specif incident. On the other hand, it has been alleged in the complaint that these applicants used to remain in contact with each other on mobile phone and hatched conspiracy to instigate the applicant no.1/husband to extend ill-treatment to respondent no.2. The applicant nos.5, 6 and 7 are residing at different places. Applicant nos.8 to 11 are the family members of applicant no.5 from her parents side. It has been merely alleged in the complaint that applicant no.1/husband of respondent no.2 has performed second marriage with applicant no.10 and, accordingly, committed offence of bigamy for the offence punishable under section 494 r/w 34 of IPC. So far as the charge under sections 406, 420, 323, 504, 506 r/w 34 of IPC are concerned, allegations to that extent as against all the applicants are absurd and vague in nature.

14. So far as the charge under section 494 read with section 34 of the IPC against all the applicants are concerned, section 494 of IPC is contained in Chapter

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XX pertaining (to offences relating to marriage). Section 494 of IPC reads as under :-

“Section 494 in The Indian Penal Code :-

Marrying again during lifetime of husband or wife -
Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

15. Section 494 provides that in the event of conducting a second marriage, husband/wife shall be punished with imprisonment in the event “such marriage is void by reason of its taking place during the life time of such husband/wife”. It is true that personal law applicable to Muslims do contemplates four marriages by Muslim Male. One of the most important ingredients to attract section 494 of the IPC is that second marriage should be void. So far as Muslim males are concerned, second marriage is not void, consequently, section 494 of the IPC is not attracted, even if, Muslim male marries a second woman.

16. In a case of **Dr. Surajmani Stella Kujur Vs. Durga Charan Hansdah and another reported in (2001) 3 Supreme Court Cases 13**, relied upon by the learned counsel for the applicants, in paragraph nos.14 and 15 of the judgment, the Supreme Court has made following observations :-

“14. Nowhere in the complaint the appellant has referred to any alleged custom having the force of law which prohibits the solemnisation of second marriage by the respondent and the consequences thereof. It may be emphasised that mere pleading of a custom stressing for monogamy by itself was not sufficient unless it was further pleaded that second marriage was void by reason of its taking place during the life of such husband or wife. In order to prove the second marriage being void, the appellant was under an obligation to show the existence of a custom which made such marriage null, ineffectual, having no force of law or binding effect, incapable of being enforced in law or nonest. The fact of second marriage being void is a sine qua non for the applicability of Section 494 IPC. It is settled position of law that for fastening the criminal liability, the prosecution or the complainant is obliged to prove the existence of all the ingredients constituting the crime which is normally and usually defined by a statute. The appellant herself appears to be not clear in her stand inasmuch as in her statement in the court recorded on 24th October, 1992 she has stated that "I am a Hindu by religion". The complaint was dismissed by the trial court holding, "there is no mention of any such custom in the complaint nor there is evidence of such custom. In the absence of pleadings and evidence reference to Book alone is not sufficient". the High Court vide the judgment impugned in this

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appeal held that in the absence of notification in terms of sub-section (2) of Section 2 of the Act no case for prosecution for the offence of bigamy was made out against the respondent because the alleged second marriage cannot be termed to be void either under the Act or any alleged custom having the force of law.

15. In view of the fact that parties admittedly belong to the Scheduled Tribes within the meaning of clause (25) of Article 366 of the Constitution as notified by the Constitution (Scheduled Tribes) Order, 1950 as amended by Scheduled Castes and [Scheduled Tribes Order \(Amendment\) Acts](#) 63 of 1956, 108 of 1976, 18 of 1987 and 15 of 1990 passed in terms of Article 342 and in the absence of specific pleadings, evidence and proof of the alleged custom making the second marriage void, no offence under Section 494 of the Indian Penal Code can possibly be made out against the respondent. The Trial Magistrate and the High Court have rightly dismissed the complaint of the appellant.”

In the case cited above, the appellant filed a complaint in the Court of Metropolitan Magistrate, stating therein that her marriage was solemnized with respondent in Delhi ‘according to Hindu rites and customs; further, that respondent has solemnized another marriage with accused no.2’. In the backdrop of these facts, the Supreme Court has observed that “fact of the second marriage being void is a sine-qua-non for the applicability of section 494 of IPC”.

17. In a case of **A.S.Nazar and others Vs. Jissa and another** reported in **2017 SCC online Ker 17001**, the Kerala High Court by referring the case of Dr. Surajmani Stella (supra), in paragraph nos.9 and 10 has made following observations :-

“9. The Apex Court in Dr. Surajmani Stella Kujur Vs. Durga Charan Hansdah [2001 KHC 1043: (2001) 3 SCC 13: AIR 2001 SC 938] held that the fact of the second marriage being void is sine qua non for the applicability of Section 494 of IPC. The Muslim male can have four wives at a time. However, if the Muslim male marries a fifth wife, he can very well be prosecuted under section 494 of IPC since the fifth marriage is void as the present law permits only four wives to be taken together.

10. One of the most ingredients to attract the offence under section 494 IPC is that the second marriage should be void. So far as Muslim males are concerned, since they can have four wives living at a time, the second marriage is not void. Since the second marriage is not void, the offence under section 494 IPC is not attracted, even if the Muslim male marries a second woman. In this case, there is no allegation that the first petitioner had married more than once before the marriage with the second petitioner. Therefore, no offence under section 494 IPC is attracted in this case. Consequently, the abetment of the said offence is also not attracted. For the said reason, there cannot be any successful prosecution against the petitioners for the above said offences and consequently, no purpose will be served even if the prosecution against the petitioners is permitted to be continued. For the said reason, I am inclined to quash annexure A-1 complaint and further proceedings against the petitioners in CC No.1232 of 2015 on the files of the Court below, in exercise of the inherent power under section 482 of Cr.P.C. to meet the ends of justice and accordingly, I order so.”

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18. In a case of **Venugopal K. Vs. Union of India and others reported in 2015 online Ker 798** relied upon by the learned counsel for the applicants, in paragraph nos.10 and 11 of the judgment, Kerala High Court has made the following observations :-

“10. There may be cases where a Muslim male or female can be prosecuted for offence under Section 494 IPC also. In a case where a Muslim male marries a fifth wife, he can very well be prosecuted under Section 494 IPC since the 5th marriage will be void, personal law being having permitted only four wives to be taken together. Similarly a Muslim female contracting a second marriage can be proceeded with for offence under Section 494 IPC. Thus submission of the learned WP(C) No.4559 of 2015 counsel for the petitioner that offence under Section 494 IPC is discriminatory between Hindu/Muslim/Christian is not acceptable. The *sine qua non* for giving rise to an offence under Section 494 is whether the second marriage performed by a husband or wife when the spouse is living is void or not. In this context judgment of the Apex Court in [Dr.Srajmani Stella Kujur v. Durga Charan Hansdah and Another](#) ([2001] 3 SCC 13) is relevant to be mentioned. In the above case wife had filed a complaint that her marriage was performed at Delhi in accordance with the Hindu rites and customs and the husband solemnized another marriage with accused No.2. Parties belonged to Scheduled Tribe. The Apex Court held that in the absence of specific pleadings, evidence and proof of alleged custom making the second marriage void, no offence under section 494 of IPC can possibly be made out against the respondent. It was WP(C) No.4559 of 2015 held by the Apex Court that the fact of second marriage being void is *sine qua non* for the applicability of section 494 of IPC. The following was laid down in paragraph 14:

"14. Nowhere in the complaint the appellant has referred to any alleged custom having the force of law which prohibits the solemnisation of second marriage by the respondent and the consequences thereof. It may be emphasised that mere pleading of a custom stressing for monogamy by itself was not sufficient unless it was further pleaded that second marriage was void by reason

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of its taking place during the life of such husband or wife. In order to prove the second marriage being void, the appellant was under an obligation to show the existence of a custom which made such marriage null, ineffectual, having no force of law or binding effect, incapable of being enforced in law or non est. The fact of second marriage being void is a sine qua non for the applicability of S.494 IPC. It is settled position of law that for fastening the criminal liability, the prosecution or the complainant is obliged to prove the (SIC) appellant herself appears to be not clear in her stand inasmuch as in her statement in the court recorded on 24th October, 1992 she has stated that "I am a Hindu by religion". The complaint was dismissed by the Trial Court holding, "there is no mention of any such custom in the complaint nor there is evidence of such custom. In the absence of pleadings and evidence reference to Book alone is not sufficient", the High Court W.P(C) No.4559 of 2015 vide the judgment impugned in this appeal held that in the absence of notification in terms of sub-section (2) of S.2 of the Act no case for prosecution for the offence of bigamy was made out against the respondent because the alleged second marriage cannot be termed to be void either under the Act or any alleged custom having the force of law."

11. To the same effect there is another judgment of the Supreme Court in [Lilly Thomas v. Union of India](#) (2000[6] SCC 224) wherein the following was observed in paragraph 23:

"23. We have already seen above that under the Hindu Marriage Act, one of the essential ingredients of a valid Hindu marriage is that neither party should have a spouse living at the time of marriage. If the marriage takes place in spite of the fact that a party to that marriage had a spouse living, such marriage would be void under S.11 of the Hindu Marriage Act. Such a marriage is also described as void under S.17 of the Hindu Marriage Act under which an offence of bigamy has been created. This offence has been created by reference. By providing in S.17 that provisions of S.494 and 495 would be applicable to such a marriage, the legislature has bodily lifted the provisions of S.494 and 495 IPC and placed them in S.17 of the Hindu Marriage Act. This is a well known legislative device. The important W.P(C) No.4559 of 2015 words used in S.494

are "MARRIES IN ANY CASE IN WHICH SUCH MARRIAGE IS VOID BY REASON OF ITS TAKING PLACE DURING THE LIFE OF SUCH HUSBAND OR WIFE". These words indicate that before an offence under S.494 can be said to have been constituted, the second marriage should be shown to be void in a case where such a marriage would be void by reason of its taking place in the lifetime of such husband or wife. The words "husband or wife" are also important in the sense that they indicate the personal law applicable to them which would continue to be applicable to them so long as the marriage subsists and they remain "husband and wife".

19. In a case of **Jafar Abbas Rasoolmohammad Merchand Vs. State of Gujarat and another** reported in 2015 SCC online Guj. 5552, relied upon by the learned counsel for the applicants, the Gujarat High Court has extensively dealt with the issue of Bigamy in general and particularly, in the context of the marriage under the Muslim law (Nikah) and further referring the various cases in paragraph nos.71 has made following observations :-

“71. In view of the above, so far as the offence punishable under section 494 of IPC is concerned, I am left with no other option but to accept the submission of Mr. Joshi that his client cannot be prosecuted for the offence punishable under section 494 of the IPC. To this extent, the petition will have to be allowed, and is, accordingly allowed.”

In the case cited above, the applicants/original accused sought to invoke the inherent powers of the Court for quashing of the proceedings of the criminal case pending before the Court for the various charges including the charge under section 494 of the IPC. It is submitted on behalf of the applicant that personal law permits the Muslim husband to get married for four times and section 494 of IPC provides whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life time of such husband or wife, would be guilty of offence of bigamy. It is also submitted that an offence of bigamy could be said to be committed only if the second marriage in point of time during the subsistence of first marriage is void.

Thus, the question that falls for consideration of the Gujarat High Court 'as to whether the offence of bigamy under section 494 of the IPC is made out'. In paragraph no.35 of the Judgment, the Gujarat High Court has referred the classification of Muslims marriages in three categories as referred in Mohmedan

Law paragraph nos.260 to 264 respectively. The Gujarat High Court has elaborately discussed the tenets of Islam and its teaching. Gujarat High Court in paragraph nos.63 and 64 by referring the view expressed by Bombay High Court have made the following observations :-

63.I may usefully quote the observations of late Justice Chagla in the case of State of Bombay Vs. Naraya [AIR 1952 Bombay page 84] as under :-

"5. Now a sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. A very interesting and instructive case is to be found in the American Reports, viz. Davis Vs. Beason, (1889) 133 US 637. In that case it was contended that polygamy was part of the creed of the Mormon Church and any legislation which penalizes polygamy to the extent that it affected Mormons was contrary to the First Amendment of the Constitution which provided that Congress shall not make any law respecting the establishment of religion or forbidding the free exercise thereof. This argument was rejected, and Mr. Justice Field delivering the opinion of the Court pointed out that (p. 640):

"The term religion has reference to ones views of his relations to his Creator, and to the obligations they impose of reverence for his being and

character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter." He further pointed out that the First Amendment could not be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. He further pointed out that (p. 640):

"Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which Government is necessarily required to deal." Further on he states (p. 640) :

"Laws are made for the Government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." It is only with very considerable hesitation that I would like to speak about Hindu religion but it is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion. It is perfectly true that Hindu religion recognizes the necessity of a son for religious efficacy and spiritual salvation. That same religion also recognizes the institution of adoption. Therefore, the Hindu religion provides for the continuation of the line of a Hindu male within the frame-work of monogamy.

"9. There can be no doubt that the Muslims have been excluded from the operation of the Act in question. Even Section 494, Penal Code, which makes bigamy an offence applies to Parsis, Christians and others, but not to Muslims because polygamy is recognized as a valid institution when a Muslim male marries more than one wife. The question

that we have to consider is whether there is any reasonable basis for creating the Muslims as a separate class to which the laws prohibiting polygamy should not apply. Now, it is an historic fact that both the Muslims and the Hindus in this country have their own personal laws which are based upon their respective religious texts and which embody their own distinctive evolution and which are coloured by their own distinctive backgrounds. Article 44 itself recognizes separate and distinctive personal laws because it lays down as a directive to be achieved that within a measurable time India should enjoy the privilege of a common uniform Civil Code applicable to all its citizens irrespective of race or religion. Therefore, what the Legislature has attempted to do by the Hindu Bigamous Marriages Act is to introduce social reform in respect of a particular community having its own personal law. The institution of marriage is differently looked upon by the Hindus and the Muslims. Whereas to the former it is a sacrament, to the latter it is a matter of contract. That is also the reason why the question of the dissolution of marriage is differently tackled by the two religions. While the Muslim law admits of easy divorce, Hindu marriage is considered indissoluble and it is only recently that the State passed legislation permitting divorce among Hindus. The State was also entitled to consider the educational development of the two communities. One community might be prepared to accept and work social reform; another may not yet be prepared for it; and Article 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all embracing character. The State may rightly decide to bring about social reform by stages and the stages may be territorial or they may be community wise. From these considerations it follows that if there is a

discrimination against the Hindus in the applicability of the Hindu Bigamous Marriages Act, that discrimination is not based only upon ground of religion. Equally so, if the law with regard to bigamous marriages is not uniform, the difference and distinction is not arbitrary or capricious, but is based upon reasonable grounds."

64. The above noted decision very well explains why the legislature thought fit for treating the Muslim as a separate class to which the laws prohibiting polygamy should not apply, but has not taken care till this date to prevent the misuse of the theory."

Thus, the Gujarat High Court in paragraph no. 71 has accepted the submissions made on behalf of the applicant that section 494 of IPC is not attracted and the applicant cannot be prosecuted for the offence punishable under section 494 of the IPC.

20. In a case **Anwar Ahmad Vs. State of Uttar Pradesh and another** reported in **1991 Cri.L.J. 717**, relied upon by the learned counsel for respondent no.2, the Allahabad High Court in paragraph no.7 has made the following observations:-

7. In the conspectus of the above discussions, the conclusions filtering from the above discussions are that the applicant has committed the offence which pushes him within the ambit of section 494 of I.P.C. At the risk of reiteration, I may observe that it is no doubt true that personal law

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applicable to Muslims in India do contemplate of four marriages by a Muslim male. Notwithstanding the fact that personal law permits a Muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act, 1954 vis-a-vis the fact that a muslim male has a legally wedded wife who has been married to him under the Mohammedan Law, Section 494 I.P.C. has to claw at the erring male. The applicant cannot take refuge behind the fallacious contention that he had contracted the second marriage with a Muslim woman by virtue of the exceptions enshrined in Mohammedan Law. Mohammedan Law does not claim precedence over Special Marriage Act 1954 keeping in view that the applicant solemnized his first marriage under Mohammedan law and he contracted his second marriage under Special Marriage Act. There being no saving clause for the applicant to purge him of the charges under Section 494 of I.P.C. I feel that the applicant is liable to be punished under section 494 I.P.C.

However, the issue dealt with by the Allahabad High Court in the above cited case is already different. Allahabad High Court has dealt with the issue in the backdrop that second marriage is contracted under the Special Marriage Act, 1954 vis-a-vis fact that that muslim male has a legally wedded wife who has been married to him under the Mohmedan law. Thus, the observations made in the above cited case cannot be made applicable to the facts of the present case.

21. In the case of ***Geeta Mehrotra and others v. State of U.P. and others***, reported in AIR 2013 SC 181 : (2012) 10 Supreme Court Cases 741, the Supreme Court has observed that “Courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

22. In the case of ***Neelu Chopra and others v. Bharti***, reported in 2010 CrLJ 448, the Supreme Court has observed that, “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. The complaint in the instant case 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”.

23. In the case of ***Taramani Parakh Vs. State of Madhya Pradesh and others***, reported in (2015) 11

SCC 260, in para 10, 14 and 15 the Supreme Court has made the following observations :-

“10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

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14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

15. The decisions referred to in the judgment of the High Court are distinguishable. In **Neelu Chopra v. Bharti, (2009) 10 SCC 184**, the parents of the husband were too old. The husband Rajesh

had died and main allegations were only against him. This Court found no cogent material against the other accused. In *Manoj Mahavir Prasad Khaitan v. Ram Gopal Poddar*, (2010) 10 SCC 673 the appellant before this Court was the brother of the daughter-in-law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier Section 498-A IPC case. This Court found the said to be absurd. In *Geeta Mehrotra v. State of U.P.* (2012) 10 SCC 741, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused.”

24. It is thus well settled that if the allegations are absurd in nature and no case is made out, the proceedings are liable to be quashed. In the instant case, even if the allegations as against the applicant nos.4 to 11 are held to be proved, no case is made out for the offence punishable under sections 498-A, 494, 406, 420, 323, 504, 506 r/w section 34 of the IPC. It is a case of over implication. So far as the applicant nos.1 to 3 are concerned, though their application is

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withdrawn to the extent of the charge under section 498-A of the IPC is concerned, however, even if the allegations as against them are held to be proved, in respect of the remaining charges i.e. 494, 406, 420, 323, 504, 506 r/w 34 of the Indian Penal Code, no case is made out against them.

25. In view of the discussion above and in terms of the ratio laid down by the Supreme Court and the High Courts as referred above, We proceed to pass the following order.

ORDER

- i. Criminal application is hereby partly allowed.
- ii. Application of applicant no.1) Kalim Shaikh Munaf, applicant no.2) Suriyabee @ Biba Shaikh Munaf and applicant no.3) Munaf Shaikh Haji Abdul Kadar to the extent of the charges under section 498-A r/w 34 is hereby dismissed as withdrawn.
- iii. First Information Report bearing Crime No.77 of 2019 registered with Sakri Police Station, District Dhule for the offence punishable under

sections 494, 406, 420, 323, 504, 506 r/w 34 of the IPC and the criminal proceedings bearing RCC No.263 of 2021 pending before the Judicial Magistrate First Class, Sakri, to the extent of the charges under sections 494, 406, 420, 323, 504, 506 read with section 34 of the IPC is hereby quashed and set aside as against applicant no.1) Kalim Shaikh Munaf, applicant no.2) Suriyabee @ Biba Shaikh Munaf and applicant no.3) Munaf Shaikh Haji Abdul Kadar.

- iv. First Information Report bearing Crime No.77 of 2019 registered with Sakri Police Station, District Dhule and the criminal proceedings bearing RCC No.263 of 2021 pending before the Judicial Magistrate First Class, Sakri, as against the applicant no.4] Salim Shaikh Munaf, 5] Nilofer Salim Shaikh, 6] Yasmin Raees Shaikh, 7] Farzana Shakil Khan Pathan, 8] Shakilabi Mubarak Khan Pathan, 9] Mubarak Khan Miya Khan Pathan, 10] Minaz @ Minu Mubarak Khan Pathan and 11] Mazhar Mubarak Khan Pathan are hereby quashed and set aside for the offence punishable under sections 498-A, 494, 406, 420, 323, 504, 506, r/w 34 of the Indian Penal Code.

- v. Criminal application accordingly disposed off.
- vi. Since Mr. M R Wagh is appointed to represent the respondent no.2, his legal fees and expenses is quantified at Rs.3,000/- (Rs. Three Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)

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