

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45981 of 2015

Arising Out of PS. Case No.-2 Year-2014 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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1. Md. Nausad Khan @ Md. Naushad Khan
 2. Yusuf @ Munna @ Md. Yusuf Khan
 3. Aftab @ Md. Aftab Khan
 4. Imran @ Md. Imran Khan @ Md. Imran,
 5. Arman
All sons of Md. Jamaiyat Hussain @ Md. Jamiyat Hussain Khan, residents of Mohalla Ansar Nagar, Masjid Gali, P.S. Nawada, District Nawada.

... .. Petitioners

Versus

1. The State of Bihar.
2. Nigar Naz, wife of Md. Naushad Khan, D/o Rustam Ali Khan, residents of Ansar Nagar, Masjid Gali, Nawada, P.S. Nawada, District Nawada, at present residing at Kalami Mohalla, Aurangabad, P.S. and District- Aurangabad

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Durgesh Nandan, Advocate Mr. Manish Prakash, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the O.P. No.2	:	Mr. Shailesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 11-10-2023

The present petition, under Section 482 Cr. P.C. has been preferred against the order dated 04.12.2014, passed by Ld. Sub-Divisional Judicial Magistrate, Aurangabad in Complaint Case No. 02 of 2014/ Trial No. 2229 of 2014/C.I.S. No. 7281 of 2014, whereby cognizance has been taken for offence punishable under Sections 498(A), 379 and 504 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition



Act against all the accused persons including the petitioners. The petitioners have also prayed for any other relief(s), which may be deemed fit and proper in the facts and circumstances of the case.

2. The allegation, as per the complaint, is that the complainant, Nigar Naz (Respondent no.2 herein) was married with petitioner no.1, Md. Nausad Khan @ Md. Naushad Khan on 16.02.2012 as per Muslim rites and customs. There was demand of 2 lacs towards dowry at the time of marriage. However, marriage was somehow solemnized and thereafter, the complainant joined the matrimonial home of her husband. However, as per allegation, at matrimonial home, she was not treated like a bride on account of non-fulfillment of demand of dowry of 2 lacs and an Alto car. She was always taunted causing mental cruelty to her and she was told that she would be treated like a servant till she fulfilled the demand of dowry. For 15 days, she was deprived of food and after much request, she was taken back to her *Maike* by her husband and just after one day, she was again taken back to his matrimonial home by her husband. She was also subjected to assault by legs and fists and she was made to wash their clothes. In April, 2012, she was taken back to her *Maike* by her mother, but she was not taken



care of by the accused persons. Thereafter, her parents and relatives took her back to her matrimonial home in May, 2012. She was again subjected to torture by the accused persons. On 27.08.2012, she was assaulted by all the accused persons and ousted from the matrimonial home and all her belongings were snatched. At that time, she was carrying pregnancy of six months. Thereafter, she called her parents from public telephone booth. Then she was taken back to her *Maike* by her parents and since then, she has been living at her *Maike*. On 26.11.2012, she gave birth to a female child, but not a single penny was spent by the accused persons on that occasion. It is further alleged that on 22.12.2013, parents-in-law of the complainant came to her *Maike* and demanded 2 lakhs and an Alto car, otherwise they would get their son re-married.

3. Ld. Magistrate, after examining the complainant, Nigar Naz and three other witnesses, namely Rizwan (distant relative of the complainant), Rustam Ali (father of the complainant) and Irshad Ahmad Khan (distant relative of the complainant) on solemn affirmation and on the basis of material on record, passed the impugned order taking cognizance against nine accused persons including the petitioners for offence punishable under Sections 498(A), 379 and 504 of the Indian



Penal Code and Sections 3/4 of the Dowry Prohibition Act.

4. Subsequently, co-accused Pravej Khan and Sahin Praveen, who are the brother-in-law and sister-in-law respectively of the complainant preferred Cr. Misc. No. 3022 of 2015 and co-accused Master Jamaiyat Hussain and Julekha Khatoon, who are the parents-in-law of the complainant, preferred Cr. Misc. No. 4409 of 2015 for quashing the cognizance order dated 04.12.2014. A co-ordinate Bench of this Court by a common order dated 08.12.2017, dismissed Cr. Misc. No. 4409 of 2015, which was preferred by the parents-in-law of the complainant. However, Cr. Misc. No. 3022 of 2015, which was preferred by the brother-in-law and sister-in-law of the complainant, was allowed.

5. Ld. counsel for the petitioners submits that petitioner no.1 is the husband of the complainant and petitioner nos. 2 to 5 are the brothers of the husband of the complainant. He further submits that the impugned order has been passed mechanically without application of judicial mind. Bare perusal of statements of the complainant and other witnesses recorded by Ld. Magistrate before taking cognizance shows that there is not even whisper of any allegation against the petitioner nos. 2 to 5. The complainant, who is alleged victim, has not uttered



even a single word against these petitioners regarding demand of dowry and torture or snatching of any property. He further submits that though two of the witnesses have made same statements against these petitioners, such statement has not much value for want of any statements of the alleged victim/complainant. Statements of other witnesses are in the nature of corroborative evidence. But when there is no allegation by the victim herself, there is no much value of such witnesses. Moreover, even such statements of other witnesses are scant and vague against these petitioners, as per which no prima facie case under Sections 498(A), 504 and 379 of the IPC and Sections 3/4 of the Dowry Prohibition Act is made out. He further submits that Hon'ble Supreme Court has time and again reiterated that in case of want of any specific allegation against the in-laws, they should not be made to face criminal trial. He refers to **Kahkashan Kausar @Sonam & Ors. Vs. State of Bihar & Ors. [(2022) 6 SCC 599]**, wherein Hon'ble Supreme Court in para 18 held that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analyzing long term ramifications of a trial on the complainant as well as the accused. It is further



manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked would result in misuse of the process of law. Therefore, Hon'ble Apex Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

6. He further submits that even petitioner no.1, being the husband of the complainant is innocent and has been falsely implicated on account of matrimonial discord between the husband and the wife/complainant. Hence, this false complaint has been filed implicating the husband and all his relatives.

7. The first and foremost submission of Ld. APP for the State and the Complainant is that the present petition filed by the Petitioner under Section 482 CrPC. for quashing the cognizance order dated 4.12.2014 has become infructuous in view of change of stage in the trial before the court below. They submit that subsequently not only charge has been framed against the Petitioners, even the prosecution evidence is on the verge of conclusion. Now, the Petitioners may raise their objection or put forward their defence before the Trial Court as per new stage of the trial.



8. On merits, Ld. APP and Ld. Counsel for the complainant submit that there is no illegality or infirmity in the impugned order. They refer to statements of witnesses-Rizwan and Rustam Ali deposed under solemn affirmation.

9. However, before I consider whether the present petition has become infructuous with change of the stage of the trial in the court below, it would be pertinent to refer to some observations of Hon'ble Apex Court in this regard.

10. In Mamta Shailesh Chandra Vs. State of Uttarakhand, [2024 SCC OnLine SC 136], Hon'ble Supreme Court has observed as follows:

“2. The appellant had filed a criminal writ petition before the High Court of Uttarakhand at Nainital for quashing an F.I.R. registered alleging commission of offences punishable under Sections 420 & 409 of the Penal Code, 1860. The proceeding arose on account of certain financial irregularities detected in a Cooperative Bank of which the appellant was posted as a Branch Manager. The ground on which the High Court has dismissed the quashing plea is that chargesheet had been submitted subsequent to filing of the quashing petition. On that basis, the High Court came to the conclusion that the criminal writ petition had become infructuous.

3. We do not agree with the reasoning of the High Court for dismissing the writ petition of the appellant, having regard to the ratio of the judgment of this Court delivered on 04.07.2011 in the case of **Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59**. That was a case arising from the quashing plea of an F.I.R., where chargesheet was submitted after institution of the petition under Section 482 of the Code of Criminal Procedure, 1973. A Coordinate Bench of this Court opined that even if the charge sheet had been filed, the Court could still examine if offences alleged to have been committed were prima facie made out or not on the basis of the F.I.R.,



chargesheet and other documents.”

11. In Abhishek Vs. State of Madhya Pradesh, [AIR 2023 SC 4209], Hon’ble Supreme Court has observed as follows:

“11.This being the factual backdrop, we may note at the very outset that the contention that the appellants' quashing petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr.P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See Joseph Salvaraj A. v. State of Gujarat and others (2011) 7 SCC 59.] This principle was reiterated in **Anand Kumar Mohatta and another v. State (NCT of Delhi), Department of Home and another (2019) 11 SCC 706** . This issue, therefore, needs no further elucidation on our part.”

12. In Thesima Begam Vs. State of T.N.,[(2020) 14 SCC 580], Hon’ble Supreme Court has observed as follows:

“3. After investigation, charge-sheet was filed and in this charge-sheet, names of the appellants were also included. The appellants at that stage filed petition under Section 482 of the Code of Criminal Procedure, 1973 (“CrPC”) for quashing of the charge-sheet against them. The High Court rejected this petition vide order dated 22-4-2016 [Thesima Begam v. State, 2016 SCC OnLine Mad 33618] only on the ground that trial in the case has begun and, therefore, the High Court would not interfere with the said process.

4. A neat submission is made by the learned counsel for the appellants that the de facto complainant herself stated in her statement that she had implicated the appellants herein out of anger and as far as they are concerned, they had no role in the family dispute and they were not party in making any demand of dowry.

5. Relevant part of the statement of the complainant reads as under:



“However my sister-in-law Thesimma, her husband Sakariah, brother-in-law's wife, namely, Hajira Beevi and small mother-in-law, namely, Saribu Nisha did not interfere in to the dispute and not taken steps and help me to live together with my husband therefore having angry over them I named their names in the complaint and otherwise they did not do any problem with me. My husband, mother-in-law and brother-in-law Mohamed Ajmir Saribu alone harassed me by demanding dowry.”

6. In view of the aforesaid stand taken by the complainant herself, we see no justifiable reason for the investigating officer to rope in the appellants as well in the charge-sheet. Interestingly, even in the charge-sheet submitted by the investigating officer, she has very categorically stated that insofar as appellants are concerned, they were living in foreign country. In spite thereof, the investigating officer filed charge-sheet against all the persons including the appellants, mechanically and without application of mind.

7. We, accordingly, allow this appeal and quash the charge-sheet insofar as the appellants are concerned. The appeal stands disposed of.”

13. In Anand Kumar Mohatta Vs. State (NCT of Delhi), (2019) 11 SCC 706, Hon’ble Supreme Court has observed as follows:

“16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636, *Umesh Kumar v. State of A.P.*, (2013) 10 SCC 591]. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

14. In Joseph Salvaraj A. Vs. State of Gujarat,



(2011) 7 SCC 59, Hon'ble Supreme Court has observed as follows:

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”

15. In G. Sagar Suri v. State of U.P, (2000) 2 SCC 636, Hon'ble Supreme Court has observed as follows:

“7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in *Pepsi Foods Ltd. Vs. Special Judicial Magistrate* (1998) 5 SCC 749 and *Ashok Chaturvedi Vs Shitul H. Chanchani*, (1998) 7 SCC 698 wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.”

16. In Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749, Hon'ble Supreme Court has observed as follows:



“29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.....

30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it.”

17. In Ashok Chaturvedi Vs. Shitul H. Chanchani, (1998) 7 SCC 698, Hon’ble Supreme Court has observed as follows:

“5. But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from



approaching the court even at an earliest (*sic* earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Penal Code, 1860 cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5-2-1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5-2-1996 taking cognizance of the offence as against the appellants stand quashed.”

18. However, when the trial has reached the stage of judgment, it is not desirable to act upon the petition filed under



Sec 482 CrPC. In **Arun Shankar Shukla Vs. State of U.P.**

(1999) 6 SCC 146, Hon'ble Supreme Court has observed as follows:

“9. In our view, the order passed by the High Court entertaining the petition of the convicted accused under Section 482 of the Code is, on the face of it, illegal, erroneous and to say the least, unfortunate. It was known to the High Court that the trial court passed proceedings to the effect that final judgment and order convicting the accused were pronounced by the trial court. It was also recorded by the trial court that as the accused were absent, the Court had issued non-bailable warrants. In such a situation, instead of directing the accused to remain present before the Court for resorting to the steps contemplated by the law for passing the sentence, the High Court has stayed further proceedings including the operation of the non-bailable warrants issued by the trial court. It is disquieting that the High Court has overlooked the important legal aspect that the accused have a right of appeal against the order of conviction purported to have been passed by the trial court. In such circumstances the High Court ought not to have entertained a petition under Section 482 of the Code and stonewalled the very efficacious alternative remedy of appeal as provided in the Code. Merely because the accused made certain allegations against the trial Judge the substantive law cannot be bypassed.

10. In this view of the matter, this appeal is allowed and the order passed by the High Court entertaining the petition under Section 482 and the other interim orders passed thereunder are quashed. The learned Sessions Judge is directed to hear the accused on the question of sentence and pass appropriate orders according to law. Till then the accused shall remain in jail. This appeal stands disposed of accordingly.

11. We make it clear that it is open to the High Court to consider all the contentions which the accused may raise against the said conviction either in the appeal which they may file, or administratively, untrammelled by any of the observations made by us in the judgment.”

19. As such, it emerges that the High Court continues to have power to entertain and act upon the petition filed under



Sec 482 CrPC even after change in the stage of the trial. There is nothing in Sec 482 CrPC to restrict the exercise of power only so long as the stage of the proceeding as it was at the time of the petition continues to be the same. It would be travesty of justice to hold that the proceeding initiated against the person can not be interfered with when it reaches its next stage, even if interference is required to prevent the abuse of the process of the court and to meet the ends of justice. It would be grave injustice to subject the petitioner to the agony and travails of the criminal trial. Inherent power of High Court has been saved to advance justice and not to frustrate it.

20. However, when the trial has reached the stage of judgment, it is not desirable to act upon the petition. After the judgment, the petitioner would have liberty to file appeal wherein he may raise all points of law and facts.

21. As such, the submission on behalf of the State and the Informant that the present petition has become infructuous with change of the stage of the trial can not be accepted. This court is duty bound to entertain and act upon the petition even when the trial has reached the stage of prosecution evidence.



22. Before I proceed to consider the rival submissions of the parties on merits, it would be pertinent to see the scope and ambit of Section 482 of the CrPC.

23. Section 482 CrPC. saves inherent power of High Court and it reads as follows:-

“482. Saving of inherent powers of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

24. In **Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, [(1988) 1 SCC 692]** , Hon’ble three-Judge Bench of Supreme Court has laid down the law as to quashment of proceedings under Section 482 CrPC as follows:

“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.”

25. Hon’ble Supreme Court in State of Haryana vs



Bhajan Lal [1992 Suppl (1) SCC 335], delivered the land mark judgment on the scope and extent of the jurisdiction of High Court under Section 482 Cr. P.C. It is still holding the field and being consistently followed and relied upon by all Courts including the Apex Court.

26. Hon'ble Apex Court in Bhajan Lal case (supra) held as follows:-

“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.”

27. In Smt. Nagawwa Vs. Veeranna Shivalingappa



Konujalgi [(1976) 3 SCC 736], while considering the scope of Sections 202 and 204 of CrPC., Hon'ble Supreme Court laid down the following guidelines and grounds on which proceeding would be quashed.

“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

28. In Pepsi Foods Limited & Anr. v. Special Judicial Magistrate & Ors., [(1998) 5 SCC 749], Hon'ble Supreme Court has held as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not



that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

29. Hon’ble Supreme Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122] observed as follows:

“8. ... 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.”

30. Hon’ble Supreme Court in State of Orissa Vs. Saroj Kumar Sahoo, (2005) 13 SCC 540 explaining the ambit and scope of Section 482 Cr. P.C. observed as follows:

“8. While exercising the 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 the 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 the 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 the 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 report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

31. In Indian Oil Corpn. v. NEPC India Ltd., [(2006) 6 SCC 736], Hon’ble Supreme Court has held as follows:

“12. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce



the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged...”

32. In Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, Hon’ble Supreme Court has observed as under:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the



exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

33. It emerges from the aforesaid statutory provisions and the case laws that for taking cognizance of any offence and issuing summons to any accused in a complaint case, there must be a prima facie offence made out on the basis of the allegation made in the complaint and the statements made by the complainant and his witnesses during inquiry under Section 202 CrPC. However, such allegation or the statements should not be patently absurd and inherently improbable to a prudent mind. Moreover, the allegation/statements made in the complaint and during inquiry under Section 200 CrPC. should be examined as a whole, but the veracity of such statements could not be examined at this stage. The statements have to be taken at their face value to see whether prima facie case is made out or not.

34. Now, the question for consideration is, whether the allegation made in the complaint or the statement of the witnesses as recorded in support of the same taken at their face value make out any case against the accused.

35. It would also be pertinent to refer to some observations of Hon’ble Supreme Court, which have been made



in criminal cases with reference to Complaint made for offence punishable under Section 498A and Demand of Dowry.

36. In G.V. Rao Vs. L.H.V. Prasad & Ors. [(2000) 3 SCC 693], Hon'ble Supreme Court has observed as follows:

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.”

37. In Kailash Chandra Agrawal & Anr. Vs. State of Uttar Pradesh Ors. [(2014) 16 SCC 551], Hon'ble Supreme Court has observed as follows:

“8..... The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.....”

38. In Kans Raj Vs. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207, Hon'ble Supreme Court



has observed as follows:

“5. ... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

39. In Rajesh Sharma & Ors. Vs. State of Uttar Pradesh & Anr. [(2018) 10 SCC 472], Hon’ble Supreme Court has observed as follows:

“14.....
It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant.....”

40. In K. Subba Rao & Ors. Vs. State of Telangana, [(2018) 14 SCC 452], Hon’ble Supreme has observed as follows:

“6. Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335]. The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the



basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

41. In Rashmi Chopra Vs. State of Uttar Pradesh & Anr. [(2019) 15 SCC 357], Hon’ble Supreme Court has observed as follows:

“24..... A perusal of the complaint indicates that the allegations against the appellants for the offences under Section 498-A and Sections 3/4 of the Dowry prohibition Act are general and sweeping. No specific incident dates or details of any incident have been mentioned in the complaint. The complaint having been filed after the proceeding for divorce was initiated by Nayan Chopra in the State of Michigan, where Vanshika participated and divorce was ultimately granted. A few months after filing of the divorce petition, the complaint has been filed in the Court of CJM, Gautam Budh Nagar with the allegations as noticed above. The sequence of the events and facts and circumstances of the case leads us to conclude that the complaint under Section 498-A and Sections 3/4 of the Dowry Prohibition Act have been filed as counter-blast to divorce petition proceeding in the State of Michigan by Nayan Chopra.

25. There being no specific allegation regarding any one of the applicants except common general allegation against everyone i.e. “they started harassing the daughter of the applicant demanding additional dowry of rupees one crore” and the fact that all relatives of the husband, namely, father, mother, brother, mother's sister and husband of mother's sister have been roped in clearly indicates that the application under Section 156(3) CrPC was filed with a view to harass the applicants. Further, prior to filing of the application under Section 156(3) CrPC there was no complaint at any point of time by the girl or her father making allegation of demand of any dowry by any one of the applicants. When both Nayan Chopra and Vanshika started living separately since November 2013, had there been any dowry demand or harassment the girl would have given complaint to police or any other authority. Further, in the divorce proceedings at Michigan, USA, parties have agreed for dividing their properties including gifts given at marriage but no complaint was made in those proceedings regarding



harassment by her husband or his family members.”

42. In Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors. (2022) 6 SCC 599, Hon’ble Supreme Court has observed as follows:-

“17. The above mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

43. Hence, it emerges that tendency has developed to rope in all the relatives of the Husband in criminal



complaint filed for offence punishable under Sec. 498 IPC and Dowry Prohibition Act to harass the whole family of the husband and put pressure on the husband to settle the Matrimonial disputes. Hence, The court is required to be careful in summoning the relatives of the husband without there being specific material against them. General and omnibus allegation against the relatives of the husband is not sufficient to summon them in such criminal complaints. Otherwise, it would be an abuse of the process of the court and travesty of justice.

44. Now, coming to the case on hand, I find that on complaint of the Complainant, Ld. S.D.J.M, Aurangabad, has taken cognizance of offence punishable under Section 498A, 379 and 504 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against all the Accused-Petitioners. However, after perusal of the Complaint and the statement of the Complainant made during inquiry under Section 200 CrPC., I find that there is no specific allegation against Petitioners other than Petitioner No.1, who is husband of the Complainant, except naming all the Petitioners as Accused-Persons, and Statement that she has filed Complaint against all the Accused-Petitioners. But, there is no specific statement



of the Complainant either in the complaint or in her statement made under Section 200 CrPC., attributing any specific role to Accused-Petitioners except Petitioner No.1, who is husband of the Complainant. It clearly suggests that except husband, other Petitioners have been roped in as Accused only for harassing the whole family of the husband on account of matrimonial discord. If such criminal proceeding against the Accused Petitioners, other than husband is allowed, it would be an abuse of the process of the Court and miscarriage of justice. Hence, the impugned cognizance order and criminal proceeding arising out of the same against the Petitioner No.2 to 5 are liable to be quashed and set aside. However, a *prima facie* case is made out against the Petitioner No.1, who is husband of the Complainant. Hence, the impugned cognizance order and the criminal proceeding arising out of the same against the Petitioner No.1 is upheld.

45. Hence, the petition is dismissed with reference to petitioner no.1, Md. Nausad Khan @ Md. Naushad Khan. However, the petition with reference to Petitioner nos. 2 to 5 is allowed, quashing and setting aside the impugned order dated 04.12.2014, passed by Ld. Sub-Divisional Judicial Magistrate, Aurangabad in Complaint Case No. 02 of



2014/Trial No. 2229 of 2014/C.I.S. No. 7281 of 2014 and the criminal proceeding arising out of the same.

46. The present petition stands disposed of, accordingly.

(Jitendra Kumar, J.)

S. Ali/Ramesh

AFR/NAFR	AFR
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