

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.137 OF 2021

Ramesh Sitaldas Dalal & Anr.

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

....

Ms Shubhada Khot i/b. Mr. Danish Patel for the Petitioner.

Ms Gayatri Gokhale i/b. Mr. Faisal Shaikh for Respondent No.2.

Ms M.M. Deshmukh, APP for Respondent No.1-State.

Ms Rohini Dhere, API, Malabar Hill Police Station, present.

CORAM: ANUJA PRABHUDESSAI &

N.R. BORKAR, JJ.

JUDGMENT RESERVED ON : 29th SEPTEMBER, 2023.

JUDGMENT PRONOUNCED ON: 9th NOVEMBER, 2023.

JUDGMENT: (Per Smt. Anuja Prabhudessai, J.):-

1. With consent, heard finally at the stage of admission.
2. The petitioners aged 80 and 75 years respectively, who are the parents-in-law of respondent No.2 have filed this petition under Article 226 of the Constitution of India to quash the First Information Report No.152 of 2020 registered with Malabar Hill Police Station, for offences under Sections 498-A, 420, 406, 323, 506(ii) r/w 34 of the Indian Penal Code.

**PRASANNA
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3. The brief facts necessary to decide this petition are as under:-

The respondent No.2 and Deepak, the adopted son of the petitioners were school friends and they continued their friendship beyond schooling days. Deepak pursued his career in Hotel Management and is employed in Dubai, whereas respondent No.2 is a professional dancer. Their friendship eventually turned into love and they decided to enter into matrimonial ties. The father of the respondent no.2 did not approve of the relationship initially but later relented as his wife supported the decision of their daughter. The respondent No.2 has stated that Deepak had told her before the marriage that he was the adopted son of the petitioners. Her parents came to know that the lady working for the petitioners was the biological mother of Deepak, however, it was too late to cancel the wedding since the invitation cards were already distributed and other arrangements were already made.

4. The engagement ceremony of respondent No.2 and the son of the petitioner was held on 17/05/2018. The respondent No.2 claims that petitioner No.2 had gifted to her gold necklace, earrings and bracelets, whereas her father gifted Deepak a gold chain of 100 gms, a family heirloom and cash of Rs.1,00,000/-. The respondent No.2 has alleged that the petitioner No.2 took back the gold ornaments given to her and did not return the same.

5. The marriage of respondent No.2 and Deepak was solemnized on 28/05/2018. Respondent No.2 claims that her father gave her diamond jewelry worth Rs.65,00,000/-. A day after the wedding respondent No.2 and Deepak went to Bali, Indonesia and returned to Mumbai after 10 days. Respondent No.2 stayed in her matrimonial home for about a month. The respondent no.2 resided with her parents after her husband went to Dubai. She later joined him at Dubai and whenever she returned to Mumbai, she stayed at her parental home.

6. Respondent No.2 claims that during her stay in the matrimonial home, the petitioner No.2 would taunt and harass her over trivial issues. She did not allow her to touch the refrigerator and gave her leftover food. She has also alleged that petitioner no.1 would look at her with a smirk on his face. He would comment that her father had not given her enough and that he should bear all her expenses.

7. Respondent No.2 leveled several allegations against her husband and alleged that he would constantly quarrel with her and subject her to physical and mental cruelty during her stay in Dubai. He sent her to Mumbai on 07/05/2019 and later persuaded her not to come to Dubai on the pretext that he had lost his job and his residence visa had expired. Respondent No.2 claimed that she was informed by her friend

that her husband was living with a Russian lady.

8. In November 2019, respondent No.2 and her father went to Dubai and with the assistance of a Court Official collected some of her belongings. She has alleged that her husband did not return her jewelry and other valuable articles. She alleged that her father had given her diamond jewelry worth Rs.1,10,00,000/- and the petitioners had given her jewelry worth Rs.1,32,00,000/-. She claims that her husband - Deepak Dalal and the petitioners have retained the said jewelry. Hence on 26/09/2020, she lodged the FIR against her husband and the petitioners, pursuant to which the aforesaid crime came to be registered.

9. The petitioners filed this petition to quash the FIR on the ground that the allegations in the FIR do not disclose any offence against them. It is contended that the respondent No.2 never resided with them since June-2018 and that she has falsely implicated them with malicious intent, with the sole purpose of harassing them. The petitioners further claim that in course of the investigation, the Investigating Officer resorted to seal their lockers and freeze all their bank accounts/FDs. It is stated that the petitioner No.1 is a heart patient and has pressure problem. Petitioner No.2 had a fall and had fractured her spine. She was infected with Covid-19 virus and was hospitalized. The petitioners raised a grievance that they have been prevented from having access to their

money to meet their basic daily expenditure as well as medical expenses. The petitioners sought to quash the FIR and to de-seal and defreeze the lockers and bank accounts contending that the FIR does not disclose any cognizable offence and that they have been implicated in a false fabricated and malicious proceedings.

10. The petitioner No.2 died during the pendency of the petition. We have perused the records and considered the submissions advanced by the respective learned counsel for the petitioner No.1 and respondent No.2 and learned APP for the State.

11. The petition under Article 226 is to quash the FIR No.152 of 2020 registered at Malabar Hill Police Station. The parameters for exercise of inherent powers under Section 482 of the Cr.P.C. or the extraordinary writ jurisdiction under Article 226 of the Constitution of India in the matter of quashing the FIR are well settled by catena of decisions of the Apex Court. In ***Abhishek v/s. State of Madhya Pradesh 2023 Live Law (SC) 731***, a Three Judge Bench of the Hon'ble Supreme Court after referring to various precedents has observed thus :-

“12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch,

Salem, Tamil Nadu and others [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [Criminal Appeal No.330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur vs. State of Punjab (AIR 1960 SC 866) and State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the

FIR/complaint.

13. *Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in Kahkashan Kausar alias Sonam and others vs. State of Bihar and others[(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications 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. On the facts of that case, it was found that no specific allegations were*

made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In Preeti Gupta and another vs. State of Jharkhand and another [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in Neelu Chopra and another vs. Bharti [(2009)

10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as 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 the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali and others vs. State of U.P. and others*(Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be

enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. *In Bhajan Lal (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads 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 channelized 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 Act concerned (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 Act concerned, 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.'

12. In the instant case, the FIR reveals that the respondent No.2 and her husband-Deepak, who were childhood friends had willingly entered into matrimonial ties on 28/05/2018. Respondent No.2 and her husband went to Bali for 10 days and on their return she stayed in her matrimonial home for a brief period of one month. The harassment allegedly meted out to respondent No.2 by the petitioners is during her brief stay in the matrimonial home in June-2018. The nature of ill-treatment and harassment as spelt out in the FIR is that the deceased-petitioner No.2 did not allow her to touch the refrigerator and gave her leftover food. It is also stated that the petitioner No.2 would constantly fight with her and taunt her over trivial issues. The allegations against the petitioner No.1 are that he looked at respondent No.2 with a smirk on his face, he would make nasty comments and taunt her that her parents had not given her enough and that they should bear her expenses. A sweeping statement has also been made that the petitioner No.2 had taken back the jewelry given by her to respondent No.2 at the time of the engagement ceremony and further that the petitioners and Deepak have retained the jewelry, gold watch and other valuable items worth Rs.1,10,00,000/- given to respondent No.2 by her father as well as

jewelry worth Rs.1,32,00,000/- given to her by the petitioners at the time of her engagement and marriage.

13. The term ‘cruelty’ for the purpose of Section 498-A of the IPC has been specifically defined. In order to constitute an offence under Section 498-A there must be prima facie material to prove (a) willful conduct 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 of the woman; (b) that they had harassed her with a view to coerce her to satisfy unlawful demand of dowry. It is well settled that to prove offence under Section 498-A, it has to be established that the woman has been subjected to cruelty continuously or persistently or at least in close proximity of time of lodging the complaint. Petty quarrels do not amount to cruelty. Reliance is placed on the decision of the Apex Court in ***Manju Ram Kalita vs. State of Asam (2009) 13 SCC 330.***

14. In the instant case, the FIR was filed on 26/09/2020 for the alleged harassment by the petitioners during the one month stay of respondent No.2 in the matrimonial home in the month of June-2018. The narratives in the FIR of Deepak being adopted son, the inter-se relationship between the petitioners or their relationship with the biological mother of Deepak and further the fact that the petitioner no.2 was a divorcee, and her marriage with the petitioner no.1 was the second

marriage, are totally irrelevant to decide the question of cruelty and proceedings under Section 498A of Cr.P.C. The other allegations against the petitioners viz. that they taunted the respondent no.2, looked at her with a smirk on his face, that they did not allow her to touch the refrigerator etc. even if accepted in their entirety do not constitute 'cruelty' within the meaning of Section 498-A of IPC.

15. The FIR does not prima facie disclose an element of deception or dishonest inducement to make out a case of cheating. Apart from the omnibus allegation that the petitioners and their son have not returned the gold ornaments, the FIR as well as the other material on record does not prima facie reveal that the said ornaments were entrusted to the petitioners and that they had refused to return the same or had dishonestly mis-appropriated the same or converted the same to their own use. On the contrary, the allegations in the FIR are that on 13/11/2019 the respondent No.2 and her father had gone to Dubai to collect her belongings. Respondent No.2 has stated that her husband gave some of the belongings but did not return gold and diamond jewelry and other valuable items. In such circumstances, the FIR and the other material on record also do not disclose offence under Section 420 and 406 of the IPC.

16. It is also relevant to note that the petitioners have specifically

averred that respondent No.2 had returned to Mumbai in the month of May -2019 to attend to her mother, who had undergone hip surgery. She refused to return to Dubai and that their son Deepak had told them that respondent No.2 had threatened to make his life miserable. During the same time the father of respondent No.2 started sending abusive messages to them. In view of constant threats and allegations they decided to distance themselves from their son to give him time and space to resolve his matrimonial dispute.

17. The petitioners, in their own wisdom issued a public notice dated 23/08/2019 that they had decided to disown their son and they had nothing to do with his marital life. They also addressed a letter dated 23/08/2019 to the Senior Police Inspector, Malabar Hill Police Station with a copy to the Commissioner of Police, apprising them of the marital dispute between their son and respondent No.2 and the apprehension of threat and harm from the parents of respondent No.2. By the said letter the petitioners requested the police to attend to their phone call and to protect them.

18. The petitioners were indeed dragged into the matrimonial dispute, indicating that their apprehension were not unfounded. Their predicament continued with the Investigating Officer treating them as

hardened criminals and sealing their lockers and freezing all their bank accounts / FDs, leaving them without any financial resources to meet their day to day expenditure including medical expenses. In such circumstances, the petitioners were compelled to approach this Court to de-freeze the bank accounts.

19. The petitioner No.1 had filed his affidavit stating that in view of freezing of all financial assets, they had no access to any money. He had also stated that the petitioner No.2 – Malvika Dalal, was hospitalized for Covid-19 virus and pneumonia. He lamented that they had no money to meet their regular household expenses and medical expenses and they were constrained to borrow money from the friends and family for their subsistence and survival.

20. The petitioner No.1 had also stated that he has two unmarried sisters aged 86 and 89 years who were living in the same building and were financially dependent on him. He had stated that one of the sisters was suffering from early stage Dementia while the other had suffered a stroke and was completely bedridden. The petitioner No.1 has stated that he and his family members were in need of money to meet their basic living expenses as well as medical expenses.

21. Order dated 20/04/2022 reveals that the request was vehemently opposed by the State as well as the respondent No.2. Dismayed with such approach, the Court observed that the parties may have some grudge against each other in day to day life but ultimately at some point of time parties are expected to consider the facts with a humane approach and show some consideration without stretching the things too far. Hence, this Court, by way of ad-interim relief, allowed the petitioners to withdraw an amount of Rs.5,00,000/- from their bank accounts.

22. Undisputedly, sub-section(1) of Section 102 confers powers on the Police Officer to seize certain properties. In ***State of Maharashtra vs. Tapas D. Neogy 1999 AIR SCW 3389*** the Apex Court has observed that the bank account of the accused or any of his relation is ‘property’ and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence.

23. In ***M.T. Enrica Lexie & Anr. vs. Doramma & Ors. (2012) 6 SCC 760*** the Apex Court has reiterated that :

“14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to

be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. It is held that a property not suspected of commission of offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code the police officer can seize such property which is covered by Section 102(1) and no other.”

24. In ***Nevada Properties Pvt. Ltd. vs The State Of Maharashtra, AIR 2019 SC 4554***, a Three Judge Bench of the Hon’ble Supreme Court while holding that the expression ‘any property’ used in sub-section (1) of Section 102 of the Cr.P.C. does not include immovable property and that the police officer cannot seize such property, has observed that

“ 20. ... Equally important, for the purpose of criminal appeal arising out of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police

officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. The expression ‘circumstances which create suspicion of the commission of any offence’ in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not ‘any property’ is required to be seized. The word ‘suspicion’ is a weaker and a broader expression than ‘reasonable belief’ or ‘satisfaction’. The police officer is an investigator and not an adjudicator or a decision maker. ...”

25. As noted above, the Investigating Officer has sealed two lockers of the petitioners. It is stated that the two lockers i.e. locker No.855 in the names of the petitioners and their son Deepak and locker No.487 in the name of the petitioners were sealed. It is stated that only one of the lockers was opened in presence of panchas and the parties and

that the respondent no.2 has identified some of her jewelry in the said locker, whereas the second locker has been sealed without opening. The Investigating Officer also addressed letters to the Bank Manager not to allow the petitioners to operate their accounts or encash their FDs, the details of which are given at page nos.194 and 195 of the chargesheet.

26. There is absolutely no material on record to indicate that the bank accounts and FDs of the petitioners had any nexus with commission of any offence. The Investigating Officer as well as the learned APP has not been able to give any plausible or valid reason to freeze the bank accounts/F.Ds of the petitioners and further they have not been able to demonstrate that the seizure was reported to the Magistrate forthwith, as mandated under sub section (3) of Section 102 Cr.P.C. The action, which is totally high handed and arbitrary gives an impression of unfairness and /or ulterior motive.

27. It is also pertinent to note that this Court by order dated 22.01.2021 had directed the Investigating agency not to file the chargesheet qua the petitioners without leave of the the Court. Despite the said order, the Investigating Officer filed a chargesheet on 11.11.2022 without there being any material to show their involvement in the said crime. Suffice to say that the role of the Investigating Officer is not to favour or disfavour any person, but to unravel the truth in exercise of

powers and procedure stipulated in Chapter XII of Cr.P.C. No doubt the Investigating Officer is not required to go into the truthfulness or genuineness of the allegations in the FIR or the other material collected in course of the investigation. Yet, the Investigating Officer does not have unfettered discretion to brand an innocent person as an accused, to file chargesheet and send him for trial, unless uncontroverted allegations and material collected in course of the investigation raise a suspicion that the person is involved in commission of a cognizable offence. In the absence of such prima facie material, compelling an innocent person to approach the Court for discharge, quashing or to go through a trial and thereby subjecting him to mental trauma, humiliation, stigmatization and loss of reputation would imperil his personal liberty, which is sacred and sacrosanct . Hence, the investigation which is said to be the backbone of criminal justice system, should at all time be fair, proper and in accordance with constitutional guarantees and legal provisions.

28. In ***Babubhai Vs. State of Gujarat, (2010) 12 SCC 254*** the Apex Court has observed that:

“ 25. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to

conduct the investigation avoiding any kind of mischief or harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct dispel any suspicion as to its genuineness. The Investigating Officer is not merely to bolster up a prosecution case with such evidence as to enable a court to record a conviction but to bring out real unvarnished truth. (vide R.P. Kapur v. State of Punjab, AIR 1960 SC 866, Jamuna Chaudhary v. State of Bihar, (1974) 3 SCC 774 and Mahmood vs. State of UP (1976) 1 SCC 542)

xxx

...Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating Agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. ”

29. The Apex Court has time and again emphasized that right to a fair investigation is a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution. In the instant case, despite there

being no prima facie material to show the involvement of the petitioners in commission of any cognizable offence, they have been dragged in a matrimonial dispute, justifying their grievance that their implication was for ulterior motive. Furthermore, freezing of the bank accounts was manifestly arbitrary and against the mandate of law. By such drastic and high handed action, the Investigating Officer compelled the petitioner to beg and borrow money from their relatives for their survival and sustenance, striking at the very right to live with human dignity.

30. The conduct of the Investigating Officer in filing the chargesheet in breach of order dated 22/01/2021 also gives rise to a suspicion that the investigation is tainted and far from being fair and impartial. The Investigating Officer Rohini Jaykar Dhere, Assistant Police Inspector, attached to Malabar Hill Police Station, Mumbai has stated in her affidavit that the chargesheet was filed due to over sight and inadvertence. The explanation appears to be far from the truth. The arbitrary manner in which the investigating agency has investigated this case indicates that the action of the Investigating Officer was to overreach the order of the Court which cannot be countenanced and in fact needs to be deprecated.

31. The aforesaid facts and circumstances clearly indicate that the investigation qua the petitioners is biased, malafide and is gross abuse

of process of law. In our considered view, the case falls squarely in categories (1) and (5) set out in Bhajanlal (supra). Under the circumstances, and in view of reasons, supra this is a fit case to quash the proceedings qua the petitioner. We have rendered findings relating to false and malafide implication of both the petitioners, despite being aware that the petitioner no.2 is deceased. We are of the considered view that this is necessary to clear the name, image and reputation of petitioner no.2, albeit her having passed away.

31. Hence the petition is allowed. The First Information Report No.152 of 2020 registered with Malabar Hill Police Station, and the consequent charge-sheet CC/502/PW/2022, pending before the Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, are quashed qua the petitioners. The bank accounts/ Fixed Deposits in the names of the petitioners are ordered to be de-freezed. The parties are at liberty to apply before the trial court for release of the jewelry and other items lying in the lockers. In the event such application is filed by either of the parties, the learned Magistrate shall decide the same in accordance with law.

. Copy of this order be forwarded to the Commissioner of Police, Mumbai to make necessary entry in the service record of the Investigating Officer Rohini Jayker Dhere, for filing the chargesheet

despite the order of the Court.

(N.R. BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)