HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-20486-2019

Date of Decision: 22.03.2023

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Banarsi Lal Khanna & Anr. ... Petitioners

VS.

State of Punjab & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Sandeep Verma, Advocate for the petitioners

Mr. Mohit Thakur, AAG Punjab

Mr. GBS Gill, Advocate for respondent No.2

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Sandeep Moudgil, J.

This petition under Section 482 CrPC has been filed by the petitioners seeking quashing of the FIR No.295 dated 20.09.2018 under Section 420 IPC (Annexure P1) along with all subsequent proceedings arising therefrom.

Petitioners No.1 & 2 are the father-in-law and mother-in-law, respectively of Akanksha (daughter of the complainant), who was married to the son of the petitioners, namely, Sameer Khanna. Respondent No.2 – Lalit Kumar, has got registered the present FIR for an offence of cheating under Section 420 IPC.

Briefly stated the facts of the case are that the present FIR was registered at Police Station City, Rajpura on the complaint of Respondent No. 2-Lailt Kumar against the petitioners and their son Sameer Khanna. The engagement of Akanksha daughter of respondent No.2 was held with Sameer Khanna son of the petitioners. At that time, Sameer Khanna, his parents (i.e.

the petitioners) and their relatives disclosed to the complainant and his daughter Akanksha that Sameer Khanna is unmarried and is permanently employed in New Zealand and is drawing Rs.5 Lacs alongwith commission. At this, the complainant engaged his daughter Akanksha on 12-04-2015 at Haveli, near Basantpura, Rajpura. At that time the complainant spend Rs.3,85,000/- on this engagement. Thereafter, the marriage of Akanksha was solemnized with Sameer Khanna at Sohi Palace, Zirakpur on 14-11-2015 and the complainant spent Rs.50 Lacs on this marriage. Thereafter after getting study visa, Akanksha was sent by the petitioners to New Zealand on 20-02-2016 and Sameer Khanna assured Akanksha that he will join her after one week at New Zealand. But after reaching to New Zealand Akanksha came to know that Sameer Khanna solemnized marriage with Chamandeep Kaur Jassal to settle in New Zealand and Sameer Khanna played a fraud upon her, so Chamandeep Kaur Jassal gave divorce to him. Due to bad character of Sameer Khanna, he did not get visa of New Zealand and his entry to that country was also banned. Consequently, the present FIR was lodged by the complainant for an offence of cheating.

Learned counsel for the petitioners contended that the present FIR is an abuse of process of law. A bare perusal of the FIR would reveal that no specific allegation has been leveled against the petitioners, who are the in-laws of the daughter of the complainant, to constitute an offence under Section 420 IPC. In fact, the present FIR is a counter-blast to the petition under Section 9 of Hindu Marriage Act filed by the son of the petitioners for restitution of conjugal rights filed against the daughter of the respondent

No.2, as the son of the petitioners sought to maintain his marriage. It is further averred that the complainant has got the present FIR registered against the petitioners so that no one from the petitioners' side prevail upon to call Akanksha back from New Zealand. The present petitioners have been made scapegoat in the entire affair as they had married their son to Akanksha for permanent settlement in abroad and had even spent huge amount from out of their savings for the said purpose without understanding the motive of the complainant and his daughter who have made their mind to abandon the matrimonial family of the son of the petitioners in India and extort money from the petitioners by falsely implicating them in the present case.

It is further contended that the allegations of the complainant at vague and general and does not at all constitute the offence as alleged in the FIR. The allegations in the complaint are not enough to register the FIR which shows that the complainant side has influenced the investigating agency and has managed to get the false and frivolous FIR registered against the petitioners. The complainant/respondent no.2 has misused the provisions of law, so as to falsely implicate the petitioners (being the father-in-law, mother-in-law) so as to harass and humiliate them. In fact, the daughter-in-law of the petitioners (Akanksha), after going to New Zealand, at her own whims and fancies, had refused to join the company of her husband in India and in-turn initiated the aforesaid FIR implicated the petitioners.

Learned counsel further submits that even from the bare perusal of the FIR, offence under section 495 of IPC which is specific in nature for the said offence, has to be filed by the wife which has not been done by the daughter of the complainant evidently because she has opted not to come back to India and has very conveniently and illegally set the criminal law in motion through her father (respondent no.2). The said aspect makes it amply clear that the said FIR is nothing but a abuse of process of law.

Furthermore, no evidence has been collected by the investigating agency in final report under section 173 Cr.PC to connect the petitioners about knowledge of the petitioners regarding previous marriage of their son Sameer Khanna who was residing at that time in New-Zealand and the allegation of bigamy under section 495 IPC would not be made out against the petitioners, as the offence was never committed in India and as per provisions of section 188 Cr.P.C., no court in India can take cognizance of an offence, which his committed outside the jurisdiction of India, without previous sanction of the Central Government.

Further, it is vehemently contended that the daughter of the complainant was very well aware that Sameer Khanna was a divorce, as is evident from the whatsapp conversation of her with Sameer Khanna (Annexure P4) which is of the year 2017 though after marriage but the present FIR has been initiated in the year 2019 after two years of the same which make it abundantly clear that the daughter of the complainant was very well aware of the previous marriage of the son of the petitioners.

Reliance has been placed on ***Preeti Gupta and Anr. Vs. State of Jharkhand & Ajnr. (2010) 7 SCC 667*** and ***Harjinder Kaur vs. State of Punjab 2004(4) RCR Crl. 332*** to contend that there is growing tendency to come out with inflated and exaggerated allegations roping up each and every relations of the husband as the things have taken a reverse trend and the women are abusing the beneficial provisions of Section 498-A IPC to rope all the family members in criminal proceedings with a view to harass and humiliate them.

Notice of motion was issued on 06.05.2019 and thereafter, the matter was adjourned umpteen number of times until 16.02.2023, when this Court permitted the parties to explore amicable settlement before the Mediation and Conciliation Centre of this Court. However, the said settlement process could not succeed as per the report of the Mediator dated 19.03.2023 and as such, the matter was remitted back to this Court for today.

Reply dated 30.08.2022 has been filed by the complainant stating that Sameer and his family members represented to them that he is well settled and works as "Marketing Representative" with Tasman International Academics in New Zealand on a monthly salary basis but work from India only, but in fact, he was working on "Commission basis which stopped as the New Zealand Govt got strict in terms of providing visas to student and since then he is not financially stable or residing in New Zealand. Sameer and his family members assured the respondent no.2 that Sameer has a steady income and that the daughter of the respondent no.2 after marriage may need to shift to New Zealand alongwith him if required by his college to come back to New Zealand & work from there. Considering the same a good house for his daughter, the respondent no.2 married his daughter to Sameer Khanna. A sum of Rs.50 lakhs was spent by the respondent no.2 on the marriage of his daughter. That after the marriage, the respondent no.2 and his daughter came to know with time that Sameer's immigration history is so terrible that after understanding all the issues and checking with Immigration New Zealand his case was such that he cannot be ever given entry to New Zealand because of "Character Issues". The daughter of the respondent no.2 found out that Sameer was previously married to one Chamandeep Kaur Jassal and had applied for residence visa which got declined and then applied on partnership based work visa with another girl named Harpreet Kaur which got declined as well. The daughter of the respondent no.2 alongwith the respondent no.2 were kept in dark about his previous marriage and divorce. Sameer concealed the fact about his former marriage and when it was told to the daughter of the respondent no.2 then it was too late to step back from the marriage and she was left with no other choice but to accept the fact that he was married before. The respondent no.2 was deceived by Sameer and his family with respect to his previous marriage and divorce and also about his status in New Zealand. Sameer and his family members have cheated the respondent no.2 and his daughter as they intentionally misrepresented themselves and intentionally induced them to perform marriage of Akanksha with Sameer. It was not acceptable to the respondent no.2 and his daughter that she be sent to another country all by herself without any support. But Akanksha was forced by Sameer, his father and other family members to agree for the same. They asked the respondent no.2 to take student loan for his daughter's studies even though neither Akanksha or the respondent no.2 wanted her to go study in New Zealand. Sameer always had an ulterior motive behind this wedlock i.e. to use Akanksha as tool for getting back to New Zealand. Akanksha, who had a job here in India and was independent and earning, was pushed to apply for studies in New Zealand and sent to New Zealand on student visa by Sameer. The conduct of Sameer and his family members in order to force Akansha was such that she told the respondent no.2 that her mental and physical health was in danger and she had no other option. In order to save her marriage and run it smoothly she agreed to do whatever Sameer and his family members asked for. Instead of a settled life, the daughter of the respondent no.2 was subjected to a lot of mental stress and was made her agree to be sent in a foreign country all by herself for which was given the assurance that Sameer will come as soon as he will get visa within 15 days. Sameer was relying on her to go to New Zealand on the basis of this marriage, which has never happened, till date. Akanksha was forced to leave her settled life here in India and live in a new country and start afresh without any support. She left for New Zealand on 26.02.2016. Akanksha went through ordeals and hardships trying to settle on her own in a new country. She would breakdown everyday due to hardships faced by her. Along with her studies she started a part time job as well. Instead of supporting Akanksha, her husband Sameer started using the little money she was earning on drinking and gambling on online casinos from the account which he had the control to use as he had the pin / account details. Now that their ulterior motive has not been fulfilled and meanwhile Akanksha got a little stability in the country she is being forced and threatened to come back to India. Sameer is a drunkard and in fact remains out for whole night after heavy drinking. Situation got even worse when he indulged in gambling online casino and usually drained the bank account balances in such activities which was not acceptable to Akanksha. She objected to this habit of drinking and gambling but had no other option but to agree to the wishes and demands of Sameer. In fact cases have been registered against him i.e. FIR 136 dated 31.08.2017 at PS IT Park and FIR 176 dated 31.08.2017 at PS Sector 26, Chandigarh. Akanksha is scared to come back to India as Sameer has been constantly threatening her. She has been receiving threats of dire consequences. Akanksha received an email and calls on whatsapp wherein he states that he will make life hell wherever she is, in New Zealand or in India and that if he decides something, nothing can stop him from doing it. Numerous times, Sameer and his family members have also been harassing and threatening me as well of dire consequences if my daughter does not agree to come back.

Reply has also been filed by the State dated 16.10.2019, wherein it has been averred that the enquiry of the application was conducted by Deputy Superintendent of Police, Circle Rajpura District and submitted his enquiry report No. 138/C/DSP/Rajpura dated 23.08.2018 to the Senior Superintendent of Police, Patiala through Superintendent of Police, Rajpura, District Patiala. However, thereafter, the Senior Superintendent of Police, Patiala sought comments from Superintendent of Police (Headquarters), Patiala, who submitted his report 584/C/SP/HQrs/Patiala dated 05-09-2018, wherein the fact of marriage between Akanksha and Sameer have been reiterated. At that time, Sameer Khanna, his parents (ie, petitioners) and their relatives disclosed to the complainant and his Akanksha that Sameer Khanna is unmarried and is permanent employed in New Zealand and is drawing Rs.5 Lacs alongwith commission. At this the complainant engaged his daughter Akanksha on 12-04-2015 at Haveli, near Basantpura, Rajpura. At that time the complainant spend Rs.3,85,000/- on this engagement. Thereafter, the marriage of Akanksha was solemnized with Sameer Khanna at Sohi Palace, Zirakpur on 14-11-2015 and the complainant spent Rs.50 Lacs on this marriage. After the marriage, getting study visa of Akanksha, she was sent to New Zealand on 20-02-2016 and Sameer Khanna assured Akanksha that he will join her after one week at New Zealand. But after reaching to New Zealand Akanksha came to know that Sameer Khanna solemnized marriage with Chamandeep Kaur Jassal to settle in New Zealand But Sameer Khanna played a fraud upon her, so Chamandeep Kaur Jassal gave divorce to him. Due to bad character of Sameer Khanna, he did not get visa of New Zealand and his entry to that country was also banned, as per the information got from New Zealand embassy. Thereafter Akanksha returned back to India in the year 2016 and started residing with her in-laws family at Chandigarh. At that time Sameer Khanna withdrew 11000 New Zealand Dollar from the ATM of Akanksha fraudulently. Thereafter Akanksha again went to New Zealand. The Superintendent of Police, Headquarters, Patiala came to conclusion that at the time of engagement of Akanksha with Sameer Khanna, the petitioners and others did not disclosed about first marriage of Sameer Khanna with Chamandeep Kaur Jassal, so prima face was made out against the petitioners and their son Sameer Khanna under section 420 IPC, so above noted case was registered after holding the enquiry in the matter.

I have heard learned counsel for the parties and gone through the case file.

Section 420 IPC, provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. As observed and held by Supreme Court in the case of ***Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr., (2019) 16 SCC 739,*** the ingredients to constitute an offence under Section 420 are that a person must commit the offence of cheating under Section 415; and the person cheated must be dishonestly induced. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.

It is of paramount importance that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

It is equally well-settled that the phrase 'dishonestly' emphasizes a deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating and delivery of property, the offence becomes punishable under Section 420 IPC. Contrarily, the mere breach of contract cannot give rise to criminal prosecution under Section 420 unless fraudulent or dishonest intention is shown right at the beginning of the transaction. It is equally important that for the purpose of holding a person guilty under Section 420, the evidence adduced must establish beyond reasonable doubt, *mens rea* on his part.

In the legal perspective, the word "fraud" or "misrepresentation" has a limited scope under this Act unlike the Contract Act. Non-disclosure of each and every fact is not material concealment. "Fraud" within the meaning of Section 12(1)(c) of the Act means either (a) deception as to the identity of the other party to the marriage, or (b) deception as to the nature of the ceremonies being performed. Where consent is given with the intention to marry the other party and with the knowledge that what is being solemnized is marriage, Courts have held that an objection to the validity of the marriage on the ground of any fraudulent misrepresentation or concealment is not tenable.

16. Similarly, in *Mulla's Hindu Law, 13th Edition*, at page 682, we have the following observations:

> *"A person who freely consents to a solemnization of the marriage with the other party in accordance with customary ceremonies, that is, with knowledge of the nature of the ceremonies and intention to marry, cannot raise an objection to the validity of the marriage on the ground of any fraudulent representation or concealment. The test to be applied is, whether*

there was any real consent to the solemnization of the marriage."

In the present case, the marriage between Akanksha (complainant's daughter) and petitioners' son Sameer Khanna was solemnized on 14.11.2015. Admittedly, there was no demand of dowry of any sort by the petitioners. The daughter of the complainant had already done IELTS (Annexure P2) meaning thereby that she had made up her to settle abroad. It was the petitioners who, even beyond their capacity, arranged and helped monetarily to enable the couples including Akanksha to settle abroad in New Zealand. The entire expenditure of application and tuition fees were arranged by petitioner No.1 and for getting student visa, the entire expenses were transferred from the account of petitioner No.1 as is evident from the bank statement (Annexure P3). It is an admitted fact that Akanksha knew that Sameer was a divorcee, however, she did not disclose it the same to his father (complainant), as is evident from the whatsapp chat (Annexure P4). Until 26.02.2016, the relationship between the couple was cordial but when Sameer was denied Visa and the petitioners requested the daughter of the complainant to come back, but she refused to do so as her father wanted her to settle (with or without Sameer) abroad and get permanent residency of New Zealand so that she could call her brother there. When Akanksha did not return back to India and snapped all communications with the petitioners, constrained with this, Sameer filed petition under Section 9 of HM Act for restitution of conjugal rights on 05.05.2018 (Annexure P5). It is in this backdrop and as a counter-blast that the present FIR has been lodged on 20.09.2018.

A bare perusal of the above would show that the ingredients of the offence of cheating are not at all disclosed in the FIR. There is absolutely no mention in the FIR that the petitioners, right from the inception, had an intention to deceive the complainant or her daughter to perform marriage with Sameer Khanna and on the pretext of performing marriage with the daughter of the respondent No.2, induced him to part with any amount or to take any steps for arranging the marriage. In fact, the petitioners themselves arranged all the funds for Akanksha to fulfill her dreams to settle abroad along with her husband. The dishonest intention, right from the beginning, which is an essential ingredient for constituting the offence of cheating, is totally absent in the present case in so far as the petitioners are concerned.

In reply, the State has not only failed to prove that the petitioners have cheated the complainant or his daughter but also that, the petitioners have dishonestly induced them or cheated them to fraudulent let happen the marriage. Thus all the three components of offence under Section 420 IPC, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* of the accused at the time of making the inducement are totally missing *qua* the petitioners. Moreover, the offence of cheating, fraudulent and dishonest intention which must exist from the very inception of marriage or even prior to marriage has also not been proved by the prosecution as is evident from challan under Section 173 CrPC which is solely based on the version of the complainant. The allegations raised in the FIR of concealment of first marriage with Chamandeep Kaur Jassal and of taking 11000 NZ dollars from the ATM of

Akanksha fraudulently are against Sameer Khanna and not against the petitioners. The allegation of fraud or misrepresentation has a limited scope under this HM Act where non-disclosure of each and every fact is not considered as material concealment. It does not lie with the complainant to say that the petitioners played any deception with regard to the identity of their son in performance of marriage or as to the nature of the ceremonies being performed and thus any objection to the validity of the marriage on the ground of any fraudulent misrepresentation or concealment is not tenable.

What is most highlighting is that the present FIR has been lodged by the complainant who is the father of Akanksha and not the victim herself. The fact that Akanksha is residing abroad and is earning there and is reluctant to return back to India even after numerous calling by the petitioners and their son speaks volume about the bent of mind of the complainant and his daughter, which ultimately led to initiation of Section 9 (restitution of conjugal rights) proceedings by the son of the petitioners which shows that the son of the petitioners, who might be previously married, but is presently very much intending to restore and save his marriage with Akanksha. The possibility of the obstinate wife who is averse to return back to India, having lodged the present FIR at the furtherance of her complainant-father, as a counter-blast to the restitution proceedings initiated by Sameer Khanna, cannot be ruled out.

In the case of ***State of Kerala v. A. Pareed Pillai and another, AIR 1973 SC 326*** the Supreme Court ruled that to hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfill the promise. Similar view has been taken in the case of ***S.W. Palanitkar and others v. State of Bihar & another (2002) 1 SCC 241*** and also in the case of ***State of Kerala vs. A. Pareed Pillai and Anr. (1972) 3 SCC 661***.

In the case of ***Hiralal Harilal Bhagwati vs CBI, (*****2003) 5 SCC 257** it has been held that:-

> *"It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had the fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."*

In ***P.J. Moore v. Valsa***, a Division Bench of the Kerala High Court held as follows:

> *"5. No doubt, the concept of fraud in the Contract Act is of wide amplitude. Fraud, in relation to matrimonial causes, cannot be understood as including concealment of every fact which relates to marriage. It has to be borne in mind that at the time of negotiation or Courtship, parties would try to project themselves in the best possible form. Some amount of exaggeration in representation is often experienced to make him or her acceptable to the other as a spouse. Mere concealment or over-statement of facts by itself does not invalidate a marriage. Hence contours of concept of fraud as widely envisaged in the Contract*

Act cannot be imported hook line and sinker to matrimonial proceedings."

It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have onerous social responsibility to ensure that the social fiber of family life is not ruined or tilted and must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. It is generally seen that majority of the complaints, which culminate in FIR, are filed either on the ill-advice or with the 'concurrence' of Advocates. It is expected from the lawyers that they must maintain the noble traditions and should treat every complaint under Section 498-A as a basic human problem and make earnest efforts to help the litigating matrimonial parties in arriving at an amicable resolution to save the matrimonial couples from the ensuing anathema.

The tendency of implicating husband and all his immediate relations is very common now-a-days. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in ***State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335***. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding

The Supreme Court in ***State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779***, the powers under Section 482 CrPC or under Article 226 of the Constitution of India to quash the first information report is to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That such power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

The Supreme Court has consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In ***Connelly v. Director of Public Prosecutions [1964] AC 1254***, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in ***Director of Public Prosecutions v. Humphrys [1977] AC 1*** stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

The Apex Court in a serious of pronouncements have emphasized that the powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but court's failing to use the power for advancement of justice can also lead to grave injustice. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

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

In ***Madhu Limaye v. The State of Maharashtra (1977) 4 SCC 551***, the Apex Court held as under:-

> *".....In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a*

criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible."

In ***Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others*** ***(1988) 1 SCC 692*** observed in para 7 as under:-

"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 utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is 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."

There is neither a single cogent allegation in the FIR, nor any specific role is attributed to them that, how, when and in what manner, they have interfered with in the married life of Akanksha and Sameer to make out a case for commissioning of offence of cheating prior or after the marriage.

As the bench-mark and the essential ingredients to constitute the offence and complicity of the petitioners are totally lacking, therefore, this

Court is of the considered view that no criminal prosecution can legally be permitted to continue against them. In the light of the facts in the instant FIR, the continuation of the criminal proceedings against the petitioners would be nothing but an abuse of the process of law. In the circumstances, the present proceedings instituted against the petitioners would not be maintainable and would be liable to be quashed and set aside.

Accordingly, this petition is allowed and the FIR No.295 dated 20.09.2018 (Annexure P1) and all the subsequent consequential proceedings are hereby quashed.

22.03.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*