

Himachal Pradesh High Court

Savitri Sarang (Aged About 64 vs Bhajan Lal And Others on 1 August, 2022

Bench: Sandeep Sharma

Reportable

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 1st DAY OF AUGUST, 2022
BEFORE

HON'BLE MR. JUSTICE SANDEEP SHARMA
CRIMINAL MISC. PETITION (MAIN) U/S 482 CRPC No. 597 of 2019

Between:

1. SAVITRI SARANG (AGED ABOUT 64 YEARS) WIDOW OF D.R DAMAN DEV SINGH RESIDENT OF HOUSE NO. 1038, SECTOR 27-B, CHANDIGARH.
2. KAMAL SARANG (AGED ABOUT 30 YEARS) DAUGHTER OF DR. DAMAN DEV SINGH WIFE OF MANDEP SINGH, RESIDENT OF FLAT NO. 304/305,

NAGARJUNA DREAMLAND KOMPALLY,
MORNING GLORY, KOMPALLE, K.V.
RANGAREDDY, KOMPALLY,
TELANGANA.

....PETITIONERS

Savitri Sarang (Aged About 64 vs Bhajan Lal And Others on 1 August, 2022

(BY MR. RANJIT SINGH GHUMAN, MR.
SUDHANSHU JASWAL AND MR.
CHANDHARN HARWAL, ADVOCATES)

AND

1. STATE OF HIMACHAL PRADESH
2. BINDIA SHARMA WIFE OF VIKRAM
SARANG RESIDENT OF SET NO.5,
SAROJ MANSION, CHOTA SHIMLA,

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SHIMLA EAST, SHIMLA, HIMACHAL

PRADESH.

....RESPONDENTS

(BY MR. SUDHIR BHATNAGAR AND
MR. NARENDER GULERIA,

ADDITIONAL ADVOCATES GENERAL
WITH SUNNY DHATWALIA, DEPUTY
ADVOCATE GENERAL, FOR THE
STATE)

(BY MR. RAKESH MANTA, ADVOCATE,
FOR RESPONDENT NO.2.)

Reserved on: 19.7.2022.

This petition coming on for hearing this day, the Court passed the following:

ORDER

By way of instant petition filed under Section 482 Cr.PC, prayer has been made by the petitioners for quashing of FIR No. 0091, dated 8.8.2019, registered at PS Shimla East, District Shimla, under Section 498-A read with Section 34 of IPC, as well as consequent proceedings, if any, pending before the competent court of law.

2. For having bird's eye view, certain facts, which may be relevant for the adjudication of the case at hand are that marriage inter-se respondent No.2-complainant (hereinafter referred to as the "complainant") and Vikram Sarang, who is son of petitioner No.1 and brother of petitioner No.2, was solemnized somewhere in April, 2009 and since then, allegedly, petitioners started harassing the complainant on one pretext or the other and as such, differences cropped inter-se petitioners and the complainant.

On 8.8.2019, approximately after 10½ years of marriage, complainant lodged FIR sought to be quashed in the instant proceedings against the petitioners, alleging therein that both the petitioners immediately after the marriage started creating misunderstanding inter-se her and her husband Vikram Sarang. She also alleged that both the petitioners besides picking up quarrel with her on small issues also instigate her husband for taking divorce from her. She also alleged that whenever her husband was not at home, both the petitioners gave her beatings. She alleged that on 3.11.2018, her eight months pregnancy was aborted on account of constant mental harassment and torture meted at the hands of the petitioners. She alleged that on 26.5.2017, the petitioners came to her house and gave beatings. She alleged that since grandfather of her husband bequeathed his entire property in her as well as her husband's name i.e. Vikram Sarang, both the petitioners create ruckus everyday in the house. She alleged that after six months of her marriage, petitioner No.1 pushed her as well as her husband out of the house and they were compelled to live in separate accommodation. She alleged that on 4.12.2018, petitioners hurled abuses at her in a marriage function at Chandigarh. She alleged that now water has gone above her head and there is constant threat to her and her husband's life from the petitioners. She also alleged that on .

18.11.2013, her mother in law made an attempt to get her husband killed.

She alleged that both the petitioners are of criminal nature and FIR already stands registered against her mother in law. At last, complainant prayed that case under Section 498-A IPC as well as

Domestic Violence Act be registered against the petitioners.

3. Police on the basis of aforesaid complaint made by the complainant lodged FIR as detailed herein above against the petitioners under Section 498-A and Section 34 of IPC. After completion of investigation, police presented challan in the competent court of law.

However, before same could be taken to its logical end, petitioners have approached this Court in the instant proceedings for quashing of FIR as well as consequent proceedings pending in the competent court of law.

4. Aforesaid prayer made in the instant petition has been seriously opposed by the respondents on the ground that there is overwhelming evidence available on record suggestive of the fact that petitioners had been constantly harassing the complainant on account of property and repeatedly, she was given beatings by them.

5. Mr. Sudhir Bhatnagar, learned Additional Advocate General and Mr. Rakesh Manta, Advocate, appearing for respective respondents, while making this Court peruse FIR sought to be quashed in the instant .

proceedings argued that same clearly discloses offence punishable under Section 498A and 34 of IPC and as such, prayer made by the petitioners for quashing of FIR deserves outright rejection. Above named counsel further argued that FIR clearly reveals that from day one, petitioners not only hurled abuses at respondent No.2, but they also indulged in character assassination. Learned counsel further argued that complainant as well as husband were also given beatings and as such, they have been rightly booked under Section 498-A.

6. To the contrary, Mr. Ranjit Singh Ghuman, Advocate, appearing on behalf of the petitioners while making this Court peruse contents of the FIR vis-à-vis provisions contained under Section 498-A IPC contended that since there is no allegation of cruelty, if any, meted to the complainant on account of bringing less dowry or demand of dowry, no case much less under Section 498-A IPC is made out against the petitioners and as such, FIR deserves to be quashed and set-aside. He argued that otherwise also, there is an inordinate delay of more than 10 years in lodging the FIR, which fact itself suggests that FIR sought to be quashed has been purposely lodged with a view to harass the petitioners with whom, respondent No.2/complainant has estranged relationship on account of property dispute. While making this Court peruse the .

documents annexed with the petition, learned counsel representing the petitioners further argued that since criminal complaints came to be lodged against respondent No.2 and her husband on account of maltreatment meted to the petitioners, respondent No.2 in retaliation has made unfounded allegation in the FIR sought to be quashed in the instant proceedings. He further argued that entire dispute as of today inter-se petitioners and complainant is on account of property left behind by late father in law of petitioner No.1, but with a view to bring petitioner No.1 under pressure, complainant in connivance with her husband concocted false story of her being maltreated and harassed by the petitioners and lodged the FIR sought to be quashed. Lastly, learned counsel for

the petitioners argued that petitioner No.2 is married since year, 2012, and since then, she is living happy married life in a place far away from Chandigarh, but yet complainant with a view to gain sympathy of this court has leveled false allegations against her as well as her mother, who is a widow.

7. I have heard the learned counsel for the parties and perused the record.

8. Before ascertaining the genuineness and correctness of the .

submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

9. Hon'ble Apex Court in judgment titled State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335 has laid down several principles, which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. Before pronouncement of aforesaid judgment rendered by the Hon'ble Apex Court, a three-Judge Bench of Hon'ble Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that 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. Relevant para is being reproduced herein below:-

"7....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 58 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."

10. Subsequently, Hon'ble Apex Court in Bhajan Lal (supra), has elaborately considered the scope and ambit of Section 482 Cr.P.C.

Subsequently, Hon'ble Apex Court in Vineet Kumar and Ors. v. State of U.P. and Anr., while considering the scope of interference under Sections 397 Cr.PC and 482 Cr.PC, by the High Courts, has held that 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 proceedings ought to be quashed. The Hon'ble Apex Court has further held that the saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In the aforesaid case, the Hon'ble Apex Court taking note of seven categories, where power can be exercised under Section 482 Cr.PC, as enumerated in Bhajan Lal .

(supra), i.e. where a criminal proceeding is manifestly attended with malafides 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, quashed the proceedings.

11. Hon'ble Apex Court in Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293, while drawing strength from its earlier judgment titled as Rajiv Thapar and Ors v. Madan Lal Kapoor, (2013) 3 SCC 330, has reiterated that High Court has inherent power under Section 482 Cr.PC., to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. While invoking its inherent jurisdiction under Section 482 of the Cr.P.C., the High Court has to be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrules the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial .

conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293, the Hon'ble Apex Court has held as under:-

"22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available

for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, .

reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising

therefrom) specially when, it is clear that the same would .

not conclude in the conviction of the accused."

12. Hon'ble Apex Court in *Asmathunnisa v. State of A.P.* (2011) 11 SCC 259, has held as under:

"12. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under section 482 of the Code of Criminal Procedure. Inherent power under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

13. The law has been crystallized more than half a century ago in the case of *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under section 482:

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

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

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

14. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others* (1976) 3 SCC 736, according to the court, the process against the accused can be quashed or set aside :

"(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".

15. This court in *State of Karnataka v. L. Muniswamy & Others* (1977) 2 SCC 699, 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 proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings 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."

13. Hon'ble Apex Court in *Asmathunnisa* (supra) has categorically held that where 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 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, High Court would be justified in exercise of its powers under S. 482 CrPC.

14. From the bare perusal of aforesaid exposition of law, it is quite apparent that exercising its inherent power under Section 482 Cr.PC., High Court can proceed to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the law.

15. Now being guided by the aforesaid law laid down by the Hon'ble Apex Court from time to time, this court would make an endeavour to find out "whether FIR sought to be quashed discloses offence, if any, punishable under Section 498-A and 34 IPC or not and evidentiary material collected on record by the prosecution is sufficient to connect the accused named in the FIR with the alleged commission of offence or not?"

16. It is quite apparent from the pleadings adduced on record by the respective parties as well as FIR sought to be quashed that marriage of complainant with Vikram Sarang, who is son of petitioner No.1 and brother of petitioner No.2, was solemnized in April, 2009. Though initially, respondent No.2 and her husband Vikram Sarang lived at her matrimonial house alongwith grandfather of the husband of the complainant and his family including petitioner No.1, but since year, 2012, when she was .

allegedly thrown out of her matrimonial house by petitioner No.1, she alongwith her husband had been living in a separate accommodation at Sector-48 Chandigarh. Though complainant in the FIR sought to be quashed has claimed that from day one of her marriage, she was harassed mentally and physically by the petitioners but no material ever came to be led on record suggestive of the fact that prior to lodging of the FIR at hand, criminal complaint, if any, was ever lodged by the complainant against the petitioners with the police or in any competent court of law, rather record reveals that relationship inter-se petitioner No.1 and her father in law, late Col. Piara Singh Sarang was not cordial and at one point of time, late Col.

Piara Singh Sarang had reported the matter to Deputy Commissioner UT Chandigarh, under Senior Citizen Act, 2007 (Annexure R-2) annexed with the reply filed by the complainant. In the aforesaid proceedings, Deputy Commissioner UT Chandigarh, directed petitioner No.1 to vacate the house of the late late Col. Piara Singh Sarang. Apart from above, documents placed on record by the petitioners herein reveal that husband of the complainant approached the Punjab and Haryana High Court by way of CWP No. 20594 of 2018, claiming therein that though he is entitled to the ownership of House No.1038, Sector 27-B, Chandigarh on the basis of will executed by his grandfather, but his other family members/relatives are .

issuing advertisement to sell the property. Punjab and Haryana High Court vide order dated 18.8.2018 (Annexure P-5) disposed of the writ petition observing in the order that effective recourse for resolving such like property dispute is to approach the Civil Court including by way of an injunction suit. Similarly, order dated 22.11.2018 (Annexure P-6), passed by the Assistant Controller (F&A) Estate Office UT Chandigarh reveals that husband of the complainant namely Vikram Sarang alongwith other family members Neeam Sarang and Promila Rani were requested to get the matter regarding transfer of ownership rights in respect of house No. 1038, Sector 27-B, Chandigarh, adjudicated from the competent court of law as per order dated 18.8.2018, passed by the Punjab and Haryana High Court.

Similarly, perusal of complaint dated 12.2.2019 (Annexure P-7), lodged at the behest of the petitioners to the Incharge Women Police Station Sector 17 Chandigarh reveals that petitioner No.1, citing threat and danger to her life lodged complaint against the complainant. In the aforesaid complainant, petitioner No.1 alleged that she is being unnecessarily harassed and mentally tortured by the complainant/respondent No.2. She also alleged that respondent/complainant repeatedly tried to defame her by sending letters by using highly vulgar, derogatory and un-parliamentary language to her, relatives and friends. Apart from above, respondent No.2 .

lodged one complaint with HP State Commission for Women, Himmatnagar, Himmatnagar, Shimla, against the petitioners in the year, 2019 (Annexure P-8). Perusal of order dated 24.1.2019, passed by the Punjab and Haryana High Court in CWP No. 1931 of 2019 further reveals that husband of the complainant namely Vikram Sarang approached the Punjab and Haryana High Court, seeking therein direction to Chandigarh Administration to transfer the ownership of the house in question. In the aforesaid order, Punjab and Haryana High Court observed as under:

"Contends that petitioner Vikram Dev Singh Sarang has a registered Will in his favour and as per the policy of the Chandigarh Administration they cannot stall the transfer of ownership if any objection is filed, even though the said transfer would be subject to outcome of the settlement in the event of the matter being taken to the court of competent jurisdiction."

17. If the allegations contained in the FIR are read in its entirety, no offence, if any, punishable under Section 498-A and 34 IPC can be said to have been committed by the petitioners, rather contents of FIR as well as other material available on record clearly reveal that entire dispute inter-se complainant and petitioners is on account of property left behind by the late Lt. Col. Piara Singh Sarang i.e. father in law of petitioner No.1 and grandfather of petitioner No.2 and husband of the complainant. Moreover as has been taken note herein above, as per own case of the complainant, she had been living separately with her husband in a separate .

accommodation at Sector 48 Chandigarh since year 2012, whereas petitioner No.1 continues to reside at house No. 1038 Sector 27-B, Chandigarh, which is otherwise bone of contention between petitioner No.1 and complainant. Though by way of will, late Col. Piara Singh Sarang has bequeathed the aforesaid house alongwith other property in the name of the complainant and her husband, but yet petitioner has not vacated the house, rather allegedly an attempt was made by her to sell the property.

Though apart from the aforesaid allegations of mental torture and harassment, complainant has alleged that she was hurled abuses and extended threats in a marriage function at Chandigarh on 4.12.2018, but if it is so, it is not understood why she failed to lodge complainant at the first instance, rather she waited for more than one year to lodge the FIR, which is subject matter of the instant case. Interestingly, in the case at hand, complainant has claimed that on 18.11.2013, her mother in law made an attempt to get her husband eliminated, but no report, if any, ever came to be lodged with the police qua the aforesaid alleged incident. As observed herein above, no case, much less under Section 498-A is made out against the petitioners. By now it is well settled that "cruelty" as defined under Section 498-A, is to be read in the context of "cruelty" meted out, if any, to the victim on account of bringing less dowry/demand of dowry. There is no .

allegation, if any, with regard to demand of dowry, rather entire dispute is with regard to property left behind by late Col. Piara Singh Sarang and as such, case under Section 498-A, is not sustainable against the petitioners.

Similarly, after an inordinate delay of 10 years of the alleged incident of threat, beatings and mental torture meted to respondent No.2/complainant at the hands of the petitioners, it may not be possible for the prosecution to prove allegations contained in the FIR against the accused that too in the absence of any medical evidence.

18. At this state, it would be apt to take note of Section 498A of IPC.

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

Explanation.--For the purposes of this section, "cruelty means"--

(a) anywilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

For the purpose of Section 498-A, "cruelty" has been specifically defined .

under the aforesaid provision of law. Though Mr. Rakesh Manta, learned counsel for the complainant vehemently argued that case of the complainant strictly falls within the definition of "cruelty" as defined under the explanation (a) and (b) of Section 498-A, but having taken note of the allegations contained in the FIR as well as other material available on record, this court finds it difficult to agree with the aforesaid submission of Mr. Manta. There is no material suggestive of the willful conduct, if any, of the petitioners to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health. Similarly, there is no allegation that at any point of time, demand, if any, ever came to be made by the petitioners of dowry or maltreatment on account of bringing less dowry. At this stage, Mr. Manta, argued that since complainant is being deprived of property, to which she is legally entitled on account of will made in her favour by late Col. Piara Singh Sarang, her case would fall under clause (b) of Section 498A, however, this Court is not inclined to accept the aforesaid submission made by the petitioners for the reason that as per explanation

(b) of Section 498A, harassment of woman must be with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. In the instant case, there is no .

whisper in the FIR that the petitioners ever coerced or maltreated the complainant on account of bringing less dowry or made any demand of dowry. Similarly, there is no allegation that petitioners at any point of time, compelled the complainant to part away with the property, if any, she possessed or coerced her to handover some property to which she is legally entitled, rather dispute inter-se complainant and petitioners is on account of property left behind by late Lt. Col. Piara Singh Sarang, who allegedly by way of will has bequeathed the entire property in favour of the complainant and her husband. Since there is a will in favour of the complainant qua the house No. 1038 at Sector 27-B, appropriate remedy for her to get the petitioners evicted from that house is not the criminal proceedings, rather by way of civil suit as was pointed by the Punjab and Haryana High

Court in its order dated 18.8.2018, passed in CWP No. 20594 of 2018.

19. Reliance is placed on judgment rendered by the Hon'ble Apex Court in *Shakson Belthissor v. State of Kerala and Anr*, 2009 (14) SCC 466, wherein it has been held that since there is no allegation of harassment on account of dowry, no offence of cruelty either under Explanation (a) or Explanation (b) of Section 498A IPC is made out.

Relevant paras of the aforesaid judgment reads as under:

"26. It was fairly agreed at bar that the aforesaid FIR was filed .

by Respondent No. 2 with the intention of making out a prima facie case of offence under Section 498A of the Indian Penal Code. The charge sheet, which was filed by the police was under Section 498A of the Indian Penal Code. As to whether or not in the FIR filed and in the charge sheet a case of Section 498A IPC is made out or not is an issue, which is required to be answered in this appeal.

27. Section 498A of the IPC reads as follows:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.

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

Explanation-For the purpose of this section, "cruelty"

means-

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand".

In the light of the aforesaid language used in the Section, the provision would be applicable only to such a case where the husband or the relative of the husband of a woman subjects the said woman to cruelty. When the ingredients of the aforesaid Section are present in a particular case, in that event the person concerned against whom the offence is alleged would be tried in accordance with law in a trial instituted against him and if found guilty the accused would be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

28. The said section contains an explanation, which defines "cruelty" as understood under Section 498A IPC. In order to understand the meaning of the expression 'cruelty' as envisaged under

Section 498A, there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to .

commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

29. When we examine the facts of the present case particularly the FIR and the charge sheet we find that there is no such allegation either in the FIR or in the charge sheet making out a prima facie case as narrated under explanation

(a). There is no allegation that there is any such conduct on the part of the appellant which could be said to be amounting to cruelty of such a nature as is likely to cause the Respondent No. 2 to commit suicide or to cause any injury to her life. The ingredient to constitute an offence under explanation (a) of Section 498A IPC are not at all mentioned either in FIR or in charge sheet and in absence thereof, no case is made out. Therefore, explanation (a) as found in Section 498A IPC is clearly not attracted in the present case.

30. We, therefore, now proceed to examine as to whether the case would fall under explanation (b) of Section 498A of IPC constituting cruelty of the nature as mentioned in explanation

(b). In order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand. When the allegation made in the FIR and charge sheet is examined in the present case in the light of the aforesaid provision, we find that no prima facie case even under the aforesaid provision is made out to attract a case of cruelty."

20. It would also be apt to take note of judgment of Hon'ble Apex Court in Wasim v. State (NCT of Delhi) (2019) 7 SCC 435, wherein it has been held as under:

"10. The conviction of the Appellant by the Trial Court under Section 498-A was not for demand of dowry. The conviction under Section 498-A was on account of mental cruelty by the Appellant in having an extra marital relation and the threats held out by him to the deceased that he would leave her and marry Poonam. 10. The High Court acquitted the Appellant .

under Section 306 IPC by reaching a conclusion on the basis of evidence that the charge of abetment of suicide on part of the Appellant was not proved. Without any discussion of the evidence pertaining to demand of dowry and without dealing with the findings recorded by the Trial Court regarding the demand of dowry, the High Court held that the offence under Section 498-A was made out.

11. Cruelty is dealt with in the Explanation to Section 498-A as follows:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, "cruelty"

means--

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any willful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of 'Cruelty'. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for willful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the Trial Court convicted the Appellant under Section 498-A IPC for his willful conduct which drove the deceased to commit suicide. The Appellant was also convicted under Section 306 IPC as the Trial Court .

found him to have abetted the suicide by the deceased.

14. The High Court ought not to have convicted the Appellant under Section 498-A for demand of dowry without a detailed discussion of the evidence on record, especially when the Trial Court found that there is no material on record to show that there was any demand of dowry. The High Court did not refer to such findings of the Trial Court and record reasons for its disapproval."

21. Reliance is also placed on judgment passed by the Hon'ble Apex Court in Varala Bharath Kumar and Anr v. State of Telangana and Anr, 2017 AIR (SC) 4434, wherein it has been held as under:

"7. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged;

where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised.

While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a Court of Appeal or Revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised *ex debito justitiae* to do real and substantial justice, for .

the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extra ordinary jurisdiction of quashing the proceedings at any stage.

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

22. In view of the detailed discussion made herein above and law taken into consideration, there is sufficient ground for this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C, for quashing of FIR and consequent criminal proceedings against the petitioners, to prevent abuse of process of law and to prevent unnecessary harassment to the petitioners against whom there is no evidence to connect them with the commission of offences as incorporated in the FIR. Otherwise

also, continuance of the criminal proceedings against the petitioners in the present case would be a sheer wastage of time of the learned trial Court and the same would amount to subjecting the petitioners to unnecessary .

and protracted ordeal of trial, which is bound to culminate in acquittal.

23. Consequently, in view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, present petition is allowed and FIR No. 0091, dated 8.8.2019, registered at PS Shimla East, District Shimla, under Section 498-A read with Section 34 of IPC, as well as consequent proceedings, if any, pending in the competent court of law are quashed and set-aside. Petitioners are acquitted of the charges framed against them in the aforesaid FIR. Accordingly, present petition is disposed of, so also pending applications, if any.

2nd August, 2022

(Sandeep Sharma) ,

(manjit)

Judge