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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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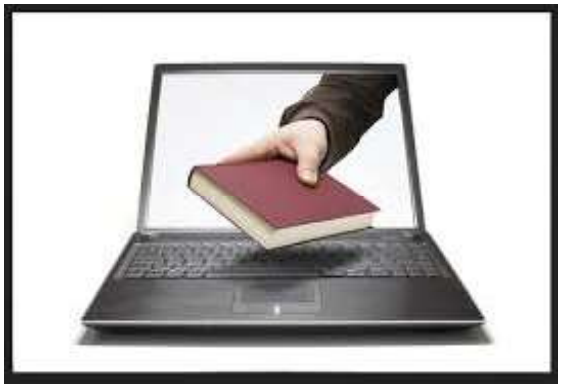

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PART - 4, 28TH FEBRUARY 2022)

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Respondent/Wife filed an application under Section 5 of the Limitation Act, to condone the delay of 270 days along with interlocutory application vide I.A. under Or.IX, Rule 13 of CPC to set aside the ex parte judgment and decree of divorce in HMOP –Trial Court, condoned the delay of 270 days in filling the application under Order IX Rule 13 CPC.

HELD: There cannot be any straight-jacket formula of universal application to condone the delay and “sufficient cause” under Section 5 of the Limitation Act is only a question of fact and the Court has to exercise its judicious discretion to meet the ends of justice - Though under Section 15 of the Hindu Marriage Act, a divorced person is entitled to marry again after expiry of appeal time, that by itself does not make the application filed either under Section 5 of the Limitation Act or under Order IX Rule 13 of CPC, infructuous - In the present case, the respondent-wife was able to explain the delay of 270 days stating believing the words of her husband she stayed back with her father who was bed-ridden and that she was totally occupied in looking-after her father and only after his death, when she informed the fact to her husband, she came to know about the ex parte decree of divorce - Civil revision petition is dismissed. **(T.S.)** ***105***

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THE UNBLUSHING PRACTICE OF MANUAL SCAVENGING AND THE TRUE COUNTENANCE OF OUR SOCIETY

"Life with poise is elemental than the life with humiliation "

BY
PVS SAILAJA
(Research scholar Andhra University-Assistant
Professor Mahatma Gandhi College of Law Andhra university)

In a brief sense any person who has been utilized to deal with the manual cleaning, cleaning, conveying of human excreta from a railroad track, insanitary lavatory, open channel or pit is viewed as a manual scavenger and this practice is called as manual scavenging. It is principally finished by people who have a place with a lower caste society and are also called as Dalits or Untouchables. It takes advantage of the minimized group of society and it's a tremendous danger to their life. It is likewise the violation of Right to Equality as people who are associated with it are viewed as untouchables and are not acknowledged by the society. They are not permitted to enter the temples or drink water from a same well and the rundown proceeds.The issue of manual searching has been occurring before the pre independence era. They are not furnished with security types of gear which prompts numerous deaths consistently every year and it likewise abuses their human right . Consequently, it became obligatory for our legislature to pass fundamental regulations and necessary laws and arrangements which will safeguard these laborers against this messy practice and will save them from consistent exploitation.

LAWS TO AVERT MANUAL SCAVENGING:

The Employment of Manual Scavenging and Construction of Dry Latrines (Prohibition) Act, 1993 [1]was conceded to preclude manual scavenging and to guarantee that the people who are indulged this practice are not denied of their privilege to live with human dignity . As it is evident from the name of the Act, it prohibits the work of the manual scavengers and furthermore the structure of the insanitary toilets.The infringement of the same is punishable with straightforward detainment as long as one year or a fine of Rs 2000/ - or with both now and again. This Act and the arrangements were made to safeguard the interest of the workers associated with this practice yet because of the awful execution and obliviousness there were no convictions and this practice continued to go and is still prevalent even subsequent to passing of this Act.

In the regulation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.[2] The absolute initial step which was laid down but this Act was to 'demolish all the insanitary insanitary latrines.' The local authorities like civil corporation , railway authorities and so on. will be considered dependable under this Act for the structure and the maintenance of the community sanitary latrines, and should

guarantee that they are useful and sterile. The subsequent advance was to restrict work of any individual for manual searching or perilous cleaning of sewers and septic tanks.

The Self Employment Scheme for Rehabilitation of Manual Scavenging, 2007 (SRMS)[3]was passed to help and provide help to the manual scroungers and their dependents for their rehabilitation in a few elective occupations.

Moving to the another The Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020. [4] This Bill was presented in the Indian Parliament by the Union Government. The primary objectives of acquainting this Bill are to eradicate manual scroungers all over the country from this heinous practice and furthermore to take out that multitude of laborers who are as of now associated with this debasing position. The Government will likewise also rehabilitate them and their family members.

In September 2020, just before the monsoon session of Parliament, a news organization detailed that the government was proposing to introduce another bill that would strengthen the law against manual scavenging. The new Bill proposed "to totally automate sewer cleaning and give better protection at work and pay compensation if there should be an occurrence of accidents''.

"There were no specific deliberations on the new Bill, rather we were sent a draft that rehashed the lacunae in the 2013 regulation, which clears the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act." As the extendedabortive history of the legislative endeavors to ban manual scavenging . From their drafting to their execution, emphases of the manual scavenging regulation just wind up perpetuating what they seek to eliminate. Delhi government effort to change sanitation laborers over to "sani-business people" who are the proprietors of sewer cleaning machines. The Delhi project was enlivened by an undertaking project launched in Telangana and, in part four, now the progress is awaiting. The two projects were the creation of the Dalit Indian Chamber of Commerce and Industry[5]. In several areas women, employed as manual scavengers, still clean latrines with their hands, despite decades of legislation.

LACK OF SAFETY MEASURES AND PRECAUTIONS

Rather than stopping the gaps, the draft of the new Bill was simply emphasizing the failures of the 2013 Act. One method for achieving an end to the practice would be for the government to live up its promise of mechanizing sewer cleaning, but again, the oratory is betrayed by the government's own acts.For this to at any point be plausible, all septic tanks and seepage chambers should be built to aspects that permit mechanical cleaning.

LOW CONVICTION RATE-DATA

In light of an inquiry regarding manual scavenging in Parliament on February 2, the Ministry of Social Justice and Empowerment expressed that in the five years till December 31, 2020, a complete 340 deaths because of manual cleaning of sewers and septic tanks were recorded in 19 states and Union Territories. According to the ministry's response, Uttar Pradesh registered the highest number of deaths at 52, Tamil Nadu 42, Delhi 36, Maharashtra 34 while Haryana and Gujarat registered 31 deaths each. As indicated by a officials in the service of ministry of social justice and empowering, 1,013 people passed on while functioning as manual scavengers over 27 years to 2020.First information reports were recorded in only 462 cases and by far most of these, 418, just summoned section 304 (death by negligence) of the Indian Penal Code, 1860.44 of the cases were enlisted just as coincidental deaths. Just 37 FIRs, or under 1%, summoned the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, the law really implied for such cases. Bejawada Wilson social activist said he was shocked by this reaction, calling information refered to by the civil rights service "totally false".

INNUMERABLE DEATHS ARE INVISIBLE

Inestimable deaths go unrecognized, a long way from the glare of the media. The tales of the deaths are seldom seen through to check whether those killed got justice. Some times deaths occur each day, many don't get detailed, particularly those in more remote towns . The media is able to ascertain the pitiable living conditions of manual scavengers but they are not able to follow the cases to see if it is going for trial, to show the lack of monitoring.Such evasions by government bodies resulted in a frequently cited judgment, Safai Karamchari vs Union of India, 2014[6]. In the judgment, the Supreme Court came down strongly on state governments asking them to abide by their duty in implementing the law. The court interoperated manual scavenging a clear violation of among other statues Article 17, which abolishes untouchability.September 18, 2019, the Supreme Court remarked[7]: "In no country, people are sent to gas chambers to die. Every month four to five people lose their lives in manual scavenging".

The 2011 Socio-Economic And Caste Census[8] recorded more than 1,82,000 families reporting at least one member as a sanitation worker: 376 of these workers have died over five years to 2019, with 110 dying in 2019, a 61% rise over the previous year. There have been no reported convictions.

Manual scavenging is a term that conceals the outrageous nature of the injustice it tries to battle. It alludes to the cleaning of human excreta the hard way, conveying it, or discarding it. It likewise applies to work who clean sewers, open channels, septic tanks and sewage pits. Manual scavenging is an impression of India's cast and social inequities in light of the fact that practically every one of the individuals who accomplish such work are from Dalit standings, generally entrusted with such work. For instance, a noted Supreme Court inspection came in a 2011 case known as the Delhi Jal Board vs National Campaign for Dignity and Rights of Sewerage and Allied Workers,[9]in which the Jal Board had contended that it was the contractor's obligation to give security gear. *"Human beings employed for doing the work in the sewers cannot be treated as mechanical robots, who*

will not be affected by poisonous gases in the manholes," said the Supreme Court. "The state and its agencies/ instrumentalists or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs."Madras High Court in Dec 8 2021 [10] has heading for the state to submit a report detailing rehabilitation measures undertaken for the benefit of family members of those manual scavengers and. ii) the quantum of compensation paid to the families of deceased manual scavengers so far.

EFFORTS AND ITS FRAMEWORK OF LEGISLATIVE BODIES :

The Indian constitution abolishes "untouchability[11]." It also prohibits caste-based discrimination in employment. The precise prohibitions on untouchability are set out in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989[12] and the Protection of Civil Rihts Act, 1955[13], In 1949, almost immediately after independence, the Indian government began appointing committees to concentrate on manual scavenging.According to the 1955 Protection of Civil Rights Act made it an offense to compel any person to practice scavenging.The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993[14] criminalized employment of manual scavengers to clean dry latrines.Most recently, on September 6, 2013, Parliament passed The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (2013 Act)[15]. The 2013 Act prohibits all forms of manual scavenging, past dry lavatories, recommends penalties for the people who propagate the practice, safeguards the individuals who really participate in it, and commits India to correct the historical injustice endured by these networks by providing substitute livelihood and other assistance. At the time of inscription, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014, awaits enactment by parliament. Among other provisions designed to brace protection for Dalits and tribal groups, the ordinance makes it a crime to make, employ, or permit anyone to do manual scavenging.

2013 THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT

The PEMSR Act, 2013 received assent of the President on September 18, 2013 and subsequently published in the Gazette of India on September 19, 2013.

ØThe Act prohibits the employment of manual scavengers, the manual cleaning sewers and septic tanks without protective equipment, and the construction of insanitary latrines.

Ø Prohibition of employment as manual scavengers; ii. Rehabilitation of manual scavengers.

ØThe Act recognizes the link between manual scavengers and weaker sections of the society. It therefore, views manual scavenging as being violative of their right to dignity.

Ø Under the Act, each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.

ØEach occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost.

Ø If he fails to do so, the local authority shall convert the latrine and recover the cost from him.

KEY RECOMMENDATIONS TO INDIAN CENTRAL AND STATE AUTHORITIES

ØIdentify all individuals currently engaged in manual scavenging and those who have engaged in the practice since it was outlawed under the 1993 Act (so the latter are entitled to benefits under the 2013 Act).

ØEnsure that rehabilitation entitlements under the 2013 Act—including financial assistance, scholarships, housing, alternative livelihood support, and other important legal and programmatic assistance—are available to manual scavenging communities.

ØTake immediate steps to ensure that officials effectively intervene to stop communities from being coerced to practice manual scavenging, including when members of such communities face threats and intimidation for attempting to leave manual scavenging. The steps should include holding officials accountable for properly enforcing relevant laws, including the 2013 Act and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

ØStrictly enforce the law against local government officials who themselves employ people to work as manual scavengers.

ØEnact The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014, No. 1 of 2014.

INTERNATIONAL HUMAN RIGHTS AND PROTECTION

To bring issues to awareness of the effect of caste based discrimination, Dalit rights activists have sought to produce International strain on the Indian government. preliminary in the mid 1980s, Dalit activists have verbalized cast based intolerance and brutality as basic human rights issues. In 1996, in spite of vociferous resistance from the Indian government, the UN Committee on the Elimination of Racial Discrimination (CERD)[16] perceived cast based discrimination as a type of racial separation Connecting cast and position based discrimination has catalyzed further consideration by the United Nations and worked with attaches with different populaces global experiencing comparable types of discrimination. In March 2014 the Supreme Court ruled[17] that the practice of manual scavenging was prohibited in India under various international instruments, including the Universal Declaration of Human Rights (UDHR)[18], the International Convention on Elimination

of Racial Discrimination (ICERD)[19],and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW[20]).India is also a party to other international conventions that reinforce obligations to end manual scavenging, including the International Covenant on Civil and Political Rights (ICCPR)[21], the International Covenant on Economic, Social and Cultural Rights (ICESCR)[22], and the Convention on the Rights of the Child (CRC). During India's most recent review for compliance with the ICESCR, ICERD, and the CRC, the Committee on Economic, Social and Cultural Rights (ESCR Committee), Committee on the Elimination of Racial Discrimination (CERD Committee), and the Committee on the Rights of the Child (CRC Committee) all issued ultimate observations calling upon India to end manual scavenging.

INTERNATIONAL HUMAN RIGHTS BODIES HAVE ADDRESSED MANUAL SCAVENGING:

UNICEF has moved toward manual scavenging as a water and sterilization issue; the World Health Organization (WHO) has taken up manual rummaging as a health problem; UNDP has an exceptional team on the issue of Scheduled Castes and Scheduled Tribes; UN Women tends to manual searching in light of that reality that 95% of manual scavengers who clean dry latrines and open defecation are ladies; and the ILO centers around finishing manual scavenging by supporting execution of pertinent government strategies in Uttar Pradesh, Bihar, Madhya Pradesh, Rajasthan, and Gujarat.

According to the Supreme Court judgement (Safai Karamchari Andolan & Ors v. Union of India & Ors., 2014) dated 24 March 2014, no human being should be allowed to enter into sewers or septic tanks for cleaning.

STRUGGLES FOR ELIMINATING MANUAL SCAVENGING AND LAW

India is the major country on the world that actually practices manual scavenging. peoples can't understand who will accomplish this work if safai-karamacharis are rehabilitated. When a parliamentary advisory group was set up to make another regulation to end manual scavenging and all organizations planned to present their suggestions, we saw even hon'ble MPs deciding to disregard the barbarity of the practice and ask-'How might our urine excreta be cleaned in the event that these people don't make it happen? ' The foundation of Indian democracy is its Constitution. The Preamble of our Constitution discusses Equality, Fraternity and Liberty. Article 17 of the Constitution precludes unapproachability.Yet, as manual scavenging, untouchability is practiced nation over, with no disgrace. Article 32 ensures all its resident balance under the steady gaze of regulation, however a similar practice of untouchability, and the constrained business of scavenging renders this guarantee void. Democracy, an arrangement of governance that brags of equivalent interest, equivalent privileges and open doors is as yet a delusion. For example, it has come to our notification that the Maharashtra Government has held sanitation related works in local bodies for people generally and generationally engaged with cleaning work. How could any legitimate government sustain untouchbility like this?

This is an obvious renouncing of value and reasonableness. justice in this setting should imply that the government begins making a fundamental move to eradicate untouchbility, and assurance elective work opportunities to children of families that have dealt with and cleaned human shit for ages.Untouchability was made unlawful and culpable however as early as 1955 when the Untouchability Offences Act might have been passed. This act expresses that the imposition on one, of a practice or profession on cause of untouchabilty, is a crime. This definition clearly incorporates manual searching. The Untouchability Offenses Act is a demonstration that is feeble in its provisions as well as in how it has been implemented. The penalty for completing an act of untouchability (as defned under the law) is either imprisonment of a half year or a fne of INR 500In 1976, Section 7A was brought into the Protection of Civil Rights Act, 1955, to make, the act of convincing any person on grounds of untouchability to scavenge, an offence punishable by imprisonmentBesides, the SC ST Prevention of Atrocities Act 1989 constructed a more grounded legitimate system to forestall and rebuff acts and crimes of untouchability and savagery, yet even this little affected the duration of unclean occupations' like manual scavenging, and to battle the discrimination faced by scavengers.

A GLORIOUS STEP AND DRAWBACKS MISSION SWACHH[23]— A critical Look On 2 October 2014, the 150th birth anniversary of Mahatma Gandhi, Prime Minister Narendra Modi restructured the current Nirmal Bharat Abhiyan and reported another mission referred to Swachh as "The state and its offices/instrumentalists or the project contractors drew in by them are under a obligation to guarantee the safty of the people who are approached to embrace perilous positions."

The mission expects to eradicate open defecation in India by 2019 by building 12 crore toilets in remote India, at an extended expense of roughly INR two lakh crore (US$29 billion) Ironically, under SRMS the government made despicable allowances of INR 5 crore in the spending plan gauge of 2017-18 when contrasted with the spending plan gauge of 2016-17. The Swachh Bharat Mission seems to be accounts switching all the eforts of the SKA. Swachh Bharat has glorifed the broom and has represented a snag in the way of caste -emancipation. Whenever the mission to pull safai-karamcharis out of the pit of manual scavenging was arriving at an unequivocal stage, Swachh Bharat entered the scene with ceremony and show. The whole center shifted from those cleaning the toilets to building toilets. Modi has wagered huge on this Swachh Bharat campaign however no one posed the fundamental inquiry who will clean these 12 crore toilets? No one asked where the excreta and urine from these toilets will go. Are sewer lines being spread out for managing this urine and excreta? Till now there is neither any such decree nor any monetary distribution for this. All things considered, these 12 crore toilets being worked under the Swachh Bharat Abhiyan will really be 12 crore septic tanks. The children of manual scavengers are very hesitant to share their parents' occupation in their schools. This feeling of inferiority created on account of the disgrace connected to their parents' occupation abandons them.Furthermore once they grow up then the main option they are left with is to do the the work that their families have been accomplishing crafted by holding the brush and cleaning. Programs like Swachh Bharat Mission are bound to set

up a few reason for exploitation of these children in the event that they keep on being constrained by their school administration to clean toilets. Also, a different cess has been exacted for Swachh Bharat and consequently billions are being gathered for constructing toilets. The government doesn't have any interest in distinguishing the individuals who are rummaging and couldn't care less about restoring them; it just thinks often about the construction of toilets. Every one of the large corporate houses are additionally occupied with contending in developing toilets for the sake of their social responsibility. The Corporate Social Responsibility (CSR) cash which might have been utilized to work on the existences of common individuals particularly the safai-karamcharis is currently being utilized uniquely for constructing toilets . In the event that the CSR assets of generally enormous partnerships are examined, we'll come to realize that this multitude of organizations are professing to construct toilets at a mass level. It appears to be that the most serious issue of the nation is development of toilets and that's it. Evidently the public authority is likewise mulling over making 30% of all CSR cash obligatorily to be utilized for Swachh Bharat .The probability of Swachh, surmising ideals, is a problematic idea in itself. Swachh Bharat is an expansion of the virtue and pollution theory , Swachh addressing a casteist outlook that is based upon a Manuwadi structure. In this there is no space for the rule of equity and justice By focusing in Swachh on the users of the toilets and silencing the lives and battles of the cleaners, Swachh Bharat is just propagating the practice of manual scavenging. We feel scared of the government's desire to build 12 crore toilets by 2019. Swachh Bharat Abhiyan will be counterproductive in individuals' struggle to break the authentic ties between their introduction to the world and caste, and between their caste and occupation. The questions then, at that point, emerge; what amount more weight will be put on the community? What number of more sewer-septic tank deaths is this country sitting tight for?

CONCLUSIONS AND SUGGESTIONS: AMENDING THE SWACHH BHARAT PROGRAMME:

No more toilets should be worked under any plans except if the government guarantees that no person will be compelled to clean drains and sewer-septic tanks. We don't need additional killing gas chambers for our people. Modernization of sewage framework ought to be ensured. Swachh Bharat Program, however famous, has chosen blind the issue of standing and to the way that thoughts of immaculateness and cleanliness in India are deep-rooted in the caste based framework program and its manner of speaking, as they stand currently, run the risk of normalizing practices like manual scavenging , along these lines driving the community further into the vicious loop of going on in this profession. The government needs to recognize this admonition in how its might interpret public and private cleanliness, and should alter its program to work with our development, and not become a detour to it.

Based on aforementioned discussions it very well may be presumed that in spite of a several legislative drives the predicament of manual has not shown a much progress. However strategy producers have started a few social welfare reforms changes coordinated

towards manual scavengers, yet have extensively neglected to guarantee their prosperity on ground. Genuine fulfillment of fundamental necessities and enhancement of the scavenging community has not exclusively been disregarded by the arrangement creators yet even the organized schedule cast developments have neglected to address the reason for manual scavengers. Manual scavenging remaining parts a genuine worry as to the issues connected with human rights. Despite the fact that legislations, extensive monetary allocation, and financial assistance programs for the scavenging networks has been put in place. Yet, the most crucial pre imperatives which is required is the thorough authorization and investigation measures expected to guarantee legitimate execution of regulations and viable utilization of monetary portion. Finally, awareness among people in general to deter corrupting occupations like that of manual scavenging is inevitable.

Awareness and Sanitation programmes: Since poor sanitation or lack of sanitation i.e., toilets, in rural and urban areas is the most fundamental cause and impediment to the abolition of manual scavenging. Thus, speeding up sanitation programmes and awareness regarding proper toilets is necessary. In 2009, UPA government made another devoted Ministry of Sanitation and Drinking Water for overseeing regulations and laws and schemes coordinated towards sterilization and sanitation programs, which included development of modern toilets , discoursing the practice of open crap and making awareness in rural and metropolitan regions down. In 2014, Swacch Bharat Abhiyaan has been sent off on comparable lines.

National level monitoring system and social audit: The Government of India should shape a public and level monitoring committee which consistently monitors the act of manual scavenging This advisory group may comprise of representatives from ministers, public delegates, state representatives, local community agents as well as delegates from common society organizations. Since execution of Acts is of fundamental significance, hence, a general social review of PEMSR Act, 2013 and generally unified schemes ought to be led by Comptroller and Auditor General of India. Such review will empower the executive and legislative to familiarize themselves with the escape clauses in the system and effective successful execution of the law Besides, for the distinguishing proof of manual scavengers in various states an exhaustive and definite overview for recognizing manual scavenging in India should be speedily led by establishing a high state council under the authority of a retired judge or a serving judge of a high court. The advisory group may incorporate representatives from state organization, schedule castes/schedule tribes state human rights commission, state woman commission and the common society representatives working for the reason for manual scavengers.

Indeed, even in the wake of passing of several Acts, this degrading practice isn't abrogated. It is the aggregate liability of our government and of the general public wherein we reside. It is the obligation of the executive to execute the regulations passed by the legislature body effectively and furthermore the obligation of the society to abide these regulations As a responsible citizen of this country when one sees any person utilized or enjoyed a manual scavenging or building an insanitary toilet then one should

straightforwardly go to the near by police headquarters and report the same Manual Scavenging is an unlawful practice and furthermore an offense. It is the infringement of Article 21. The Constitution of India bans the practice of untouchability. Assuming that the general society actively participates in the issue of annihilating manual scavenging from society and makes a move against this practice whatever they see it happening then together we will certainly eradicate this menace which has been in practice since many years.

"Now it is the occasion to citizens of India should act as protectors of our constitutional essences. and accumulate humanity ."

(Footnotes)

1. https://legislative.gov.in/sites/default/files/A1993-46_0.pdf
2. https://legislative.gov.in/sites/default/files/A2013-25.pdf
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4. https://prsindia.org/billtrack/the-prohibition-of-employment-as-manual-scavengers-and-their-rehabilitation-bill-2012
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9. While this writ petition was pending, the Endowment Department, on the ground that the petitioner sabha was seeking to construct a huge building in the land reserved for a flower garden had sought to stop the said construction and sought to take over the said land. At that stage, a meeting was conducted between the Commissioner, Endowments, the Executive Officer of the 3rd respondent temple and the representative of the petitioner-sabha on 23.06.2016. In that meeting it was agreed by all sides that the land would be used for growing flowers and the said flowers would be kept exclusively for the use of the deities in the temple. Thereafter, the Executive Officer of the temple informed the Principal Secretary, Revenue that the petitioner-sabha had failed to adhere to the decision taken in the said meeting and as such, the executive Officer of the Devasthanam should be permitted to take back the possession of the land for growing flowers in the said land. Aggrieved by these actions, the petitioner had moved this Court, by way of W.P.No.31476 of 2016.

10. While these two writ petitions were pending, the respondents again sought to take over possession of the land resulting in the filing W.P.No.1931 of 2020.

11. The respondents have filed counter affidavits in W.P.No.31476 of 2016 and W.P.No.1931 of 2020. The stand taken by them is that the petitioner-sabha has been registered earlier under 1966 Act and subsequently under Section 6 (c)(i) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short “the Act, 1987") by proceedings of the Commissioner, Endowments dated 21.11.1987 in Rc.No.J3/63732/1987 and as such, the petitioner-sabha is amenable to the control and jurisdiction of the Endowments Department. The respondents contend that in view of the non implementation of the wishes of the donors of the land, it would be appropriate for the Endowments Department and more specifically the executive Officer of the 3rd respondent-temple to take over the said land and use it for the purpose for which it has been donated, namely growing of flowers which are to be offered exclusively to the deities in the 3rd respondent-temple.

12. The respondents specifically admit in the counter affidavit filed in W.P.No.31476 of 2016 that this land belongs to the petitioner-sabha.

13. Heard Sri M. Vidyasagar learned counsel, appearing for the petitioner, the learned Government Pleader for Endowments and Sri G.Ramana Rao, learned standing counsel for the 3rd respondent.

14. There is no dispute that the petitioner-sabha is a religious and charitable institution which would fall within the ambit of the definition of such institutions under the Act, 1987. There is also no dispute that Ac.2.24 cents of land which is the bone of contention in these writ petitions is situated within the State of Andhra Pradesh. The only issue which remains is whether the petitioner-sabha can be registered under the Act, 1987 and brought within the control and regulation of the Endowments Department and its officers under the

provisions of the Endowments Act, 1987.

15. The contention of the petitioner is that it is not amenable to the jurisdiction of the Act, 1987 as the petitioner-sabha is situated outside the State of Andhra Pradesh and as such, neither the petitioner-sabha nor any of the properties of the petitioner-sabha situated in the State of Andhra Pradesh are amenable to the jurisdiction of the Endowments Act, 1987. The entries made in relation to the petitioner-sabha under Section 38 of the 1966 Act, by the Assistant Commissioner states that the petitioner has been set up on 04.09.2021 by the Telugu Beri Vaisya Kulabhimana Sabha for the purpose of helping members of this community, who visit the temple on Sivarathri day from Chennai. This register does not state as to the location of the Head Office of the petitioner-sabha except stating that it has property in Sri Kalahasti.

16. The certificate issued by the registrar of Societies in Chennai shows that this society is having its registered office in Chennai in the State of Tamilnadu. Consequently, it must be held that the Petitioner sabha is situated outside the State of Andhra Pradesh. In such a situation the issue before this court is whether the properties of the petitioner sabha situated within the State of Andhra Pradesh are amenable to the jurisdiction of the A.P. Endowments Act, 1987?

17. In State of Bihar v. Charusila Dasi, (1959 Supp (2) SCR 601 : AIR 1959 SC 1002)the Hon'ble Supreme Court, considering a similar situation held as follows:

13. Now, we proceed to a consideration of the second point. Section 3 of the Act says—

"This Act shall apply to all religious trusts, whether created before or after the commencement of this Act, any part of the property of which is situated in the State of Bihar."…….

14. It is necessary first to determine the extent of the application of the Act with reference to Sections 1(2) and 3 of the Act read with the preamble. The preamble states:

"Whereas it is expedient to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts."

It is clear from the preamble that the Act is intended to provide for the better administration of Hindu religious trusts in the State of Bihar. Section 1(2) states that the Act extends to the whole of the State of Bihar, and Section 3 we have quoted earlier. If these two provisions are read in the context of the preamble, they can only mean that the Act applies in cases in which (a) the religious trust or institution is in Bihar and (b) any part of the property of which institution is situated in the State of Bihar. In other words, the aforesaid two conditions must be fulfilled for the application of the Act. It is now well settled that there is a general presumption that

the legislature does not intend to exceed its jurisdiction, and it is a sound principle of construction that the Act of a sovereign legislature should, if possible, receive such an interpretation as will make it operative and not inoperative; see the cases referred to In re the Hindu Women's Right to Property Act, 1937 and The Hindu Women's Rights to Property (Amendment) Act, 1936 and In re a Special Reference under Section 213 of the Government of India Act, 1935 [(1941) FCR 12, 27-30] , and the decision of this Court in R.M.D. Chamarbauguwala v. Union of India [(1957) SCR 930] . We accordingly hold that Section 3 makes the Act applicable to all public religious trusts, that is to say, all public religious and charitable institutions within the meaning of the definition clause in Section 2(1) of the Act, which are situate in the State of Bihar and any part of the property of which is in that State. In other words, both conditions must be fulfilled before the Act can apply. If this be the true meaning of Section 3 of the Act, we do not think that any of the provisions of the Act have extra-territorial application or are beyond the competence and power of the Bihar Legislature. Undoubtedly, the Bihar Legislature has power to legislate in respect of, to use the phraseology of Item 28 of the Concurrent List, “charities, charitable institutions, charitable and religious endowments and religious institutions” situate in the State of Bihar. The question, therefore, narrows down to this: in so legislating, has it power to affect trust property which may be outside Bihar but which appertains to the trust situate in Bihar? In our opinion, the answer to the question must be in the affirmative. It is to be remembered that with regard to an interest under a trust the beneficiaries' only right is to have the trust duly administered according to its terms and this right can normally be enforced only at the place where the trust or religious institution is situate or at the trustees' place of residence; see Dicey's Conflict of Laws, 7th Edn., p. 506. The Act purports to do nothing more. Its aim, as recited in the preamble, is to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection of properties appertaining thereto. This aim is sought to be achieved by exercising control over the trustees in personam. The trust being situate in Bihar the State has legislative power over it and also over its trustees or their servants and agents who must be in Bihar to administer the trust. Therefore, there is really no question of the Act having extra-territorial operation. In any case, the circumstance that the temples where the deities are installed are situate in Bihar, that the hospital and charitable dispensary are to be established in Bihar for the benefit of the Hindu public in Bihar gives enough territorial connection to enable the legislature of Bihar to

make a law with respect to such a trust. This Court has applied the doctrine of territorial connection or nexus to income tax legislation, sales tax legislation and also to legislation imposing a tax on gambling. In Tata Iron & Steel Co. Ltd. v. State of Bihar [AIR (1958) SC 452, 461] the earlier cases were reviewed and it was pointed out that sufficiency of the territorial connection involved a consideration of two elements, namely, (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection. It cannot be disputed that if the religious endowment is itself situated in Bihar and the trustees function there, the connection between the religious institution and the property appertaining thereto is real and not illusory; indeed, the religious institution and the property appertaining thereto form one integrated whole and one cannot be dissociated from the other. If, therefore, any liability is imposed on the trustees, such liability must affect the trust property. It is true that in the Tata Iron & Steel Co. case [AIR (1958) SC 452, 461] this Court observed:

"It is not necessary for us on this occasion to lay down any broad proposition as to whether the theory of nexus, as a principle of legislation is applicable to all kinds of legislation. It will be enough for disposing of the point now under consideration, to say that this Court has found no apparent reason to confine its application to income tax legislation but has extended it to sales tax and to tax on gambling."

We do not see any reason why the principles which were followed in State of Bombay v. R.M.D. Chamarbaugwala [(1957) SCR 874] should not be followed in the present case. In R.M.D. Calmarbaugwala case [(1957) SCR 874] it was found that the respondent who was the organiser of a prize competition was outside the State of Bombay; the paper through which the prize competition was conducted was printed and published outside the State of Bombay, but it had a wide circulation in the State of Bombay and it was found that "all the activities which the gambler is ordinarily expected to undertake" took place mostly, if not entirely, in the State of Bombay. These circumstances, it was held, constituted a sufficient territorial nexus which entitled the State of Bombay to impose a tax on the gambling that took place within its boundaries and the law could not be struck down on the ground of extra-territoriality. We are of the opinion that the same principles apply in the present case and the religious endowment itself being in Bihar and the trustees functioning there, the Act applies and the provisions of the Act cannot be struck down on the ground of extra-territoriality.

18. In the case of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, two provisions need to be noticed:

> The Preamble to the Act reads as follows:
>
> An Act to consolidate and amend the law relating to the administration and governance of Charitable and Hindu Religious Institutions and Endowments in the State of Andhra Pradesh
>
> Section 2 (25) defines “Specific Endowment” as follows:
>
> 25) "Specific Endowment" means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise;
>
> Explanation 1. - Two or more endowments of the nature specified in this clause the administration of which is vested in a common trustee or which are managed under a common scheme settled shall be construed as a single specific endowment for the purpose of this Act.
>
> Explanation 2. - Where a specific endowment attached to charitable or religious institution is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the whole of the specific endowment provided the charitable or religious institution is situated within the State ;
>
> These provisions which are similar to the provisions considered by the Hon’ble Supreme Court in the above judgment, make it amply clear that the provisions of the Endowments Act 1987, are applicable only to those institutions which are situated within the State of Andhra Pradesh and would not be applicable to any property situated in Andhra Pradesh if the Institution to which that property belongs is not situated within Andhra Pradesh.

19. Following the aforesaid judgment, the Hon’ble Supreme Court in the case of Anant Prasad Lakshminiwas Generiwal v. State of A.P., (1963 Supp (1) SCR 844 : AIR 1963 SC 853) held as follows:

> 12. In the present case, the temple is situate in Hyderabad in the State of Andhra Pradesh. There is some property of the temple there, though the major part of the income yielding endowed property is situate outside in the State of Madhya Pradesh. In view therefore of the decision in Sm Charusila Dasi case [(1959) Suppl 2 SCR 601] the Eegulations will apply to this trust as the trust is situate in the State of Andhra Pradesh and the fact that some of the endowed properties are not in Andhra Pradesh would make no difference. Further the fact that the trust has been registered under the Madhya Pradesh Act 30 of 1951 cannot exclude the

operation of the Regulations in the case of this trust, for the trust is undoubtedly situate within the area where the Regulations are in force. A "public trust" has been defined in Section 2(4) of the Madhya Pradesh Act as meaning "an express or construst for a public, religious or charitable purpose and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose". Section 3 of the said Act provides that "the Deputy Commissioner shall be the Registrar of public trusts in respect of every public trust the principal office or the principal place of business of which as declared in the application made under sub-section (3) of Section 4 is situate in his district," and he shall maintain a register of public trusts. Section 4 provides for the registration of public trusts. It is obvious that public trust as defined in Section 2(4) of the Madhya Pradesh Act 30 of 1951 must be a public trust situate in the State of Madhya Pradesh. Even though Section 2(4) does not say so in terms, the definition must be confined to public trusts situate in Madhya Pradesh for the Madhya Pradesh legislature could not, obviously did not intend to, legislate with respect to public trusts situate outside Madhya Pradesh. Therefore, Section 2(4) must be interpreted to apply only to public trusts situate in Madhya Pradesh. This conclusion is supported by Section 3. which clearly shows that the Registrar would have jurisdiction in respect of a public trust within his District. As to where a public trust is situate has to be determined in accordance with the decision of this Court in Smt Charusila Dasi case [(1959) Suppl 2 SCR 601] and on that view the public trust in this case must be situate in Andhra Pradesh and not in Madhya Pradesh where only some of the endowed trust properties are. In the circumstances the registration of the trust under the Madhya Pradesh Act cannot be a bar against the enforcement of the relevant provisions of the Hyderabad Regulations because even if it may be necessary for the purpose of management of the property in Madhya Pradesh to register this trust also in Madhya Pradesh, that would not exclude the jurisdiction of the State of Andhra Pradesh to legislate with respect to this trust which is undoubtedly situate in Andhra Pradesh, though some property of the trust is in Madhya Pradesh. We therefore agree with the High Court that the trust in this case being situate in Andhra Pradesh, the Regulations will apply to it.

20. The Hon'ble Supreme Court, while considering the applicability of the A.P. Endowments Act, 1987, in relation to a sale transaction involving property situated in Hyderabad, belonging to a charitable trust situated in Kolkata, had held as follows,

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in A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust. (2010) 1 SCC 287 : (2010) 1 SCC (Civ) 97 : 2009 SCC OnLine SC 1750 at page 293

20. We are in agreement with the views expressed by the High Court in the impugned judgment holding that since the Head Office of the Trust is registered at Kolkata which would be enough to show that the relevant law applicable to a charitable trust would be that of the State in which the head office of the trust is registered. (See State of Bihar v. Charusila Dasi [AIR 1959 SC 1002] and Anant Prasad Lakshminiwas Ganeriwal v. State of A.P. [AIR 1963 SC 853]) In addition to this, the respondents had fulfilled their part of the obligation when Respondent 2 sent a reply dated 6-6-1979 intimating the appellants that there was no need to obtain any permission from the Endowment Department for the purpose of transferring the title in respect of the property in question as the laws of West Bengal applicable in this case were not required to take such permission for alienation of trust property. In view of the above, we are, therefore, of the view that there was no obligation on the part of the respondents to get clearance or permission or exemption from the Endowment Department of the State for the purpose of transferring the title of the property in question.

21. The Learned government pleader relied upon the judgment of the Hon'ble Supreme Court, in Nautam Prakash DGSVC v. K.K. Thakkar (2006) 5 SCC 330 : 2006 SCC OnLine SC 521 at page 338) to contend that the properties in a State would be governed by the law of that State irrespective of where the trust is situated. However, the ratio in that judgment does not support this contention. In this case, there was a peculiar situation which arose on account of the bifurcation of the State of Bombay into the State of Gujarat and Maharashtra. The Hon'ble Supreme Court, after noticing that the Trust in that case had been registered with the Charity commissioner, Bombay, when the State was united and the issue of control came up after the bifurcation of the State had held as follows:

> 24. The legislature of a State while enacting a law is required to maintain the territorial nexus. Only in certain cases, extra-territoriality provided for in the Act is accepted. The field of legislation in respect of religious endowments and religious institutions is referable to Entry 28 of List III of the Seventh Schedule of the Constitution. Ordinarily, therefore, the legislation enacted by a State will be applicable only within the territorial limits thereof. There is a general presumption that the legislature does not intend to exceed its jurisdiction. An Act relating to religious and charitable institutions would be presumed to be applicable only in respect of the properties or any part thereof situate in the State. The 1960 Act, however, makes the provisions explicit, clear and unambiguous. The property of the Trust situate within the Maharashtra region in terms of clause 4(b) of the 1960 Order is to be deemed to be registered with the

Charity Commissioner, Bombay. The said authority could thus have exercised its jurisdiction only in respect of that property. It had no jurisdiction in relation to the administration of the entire Trust as the office of the Trust is situate within the State of Gujarat. The Assistant Charity Commissioner, therefore, could not have issued any direction as prayed for in the application filed before it by the first respondent herein. A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the statute. It cannot act beyond the same. Any order which is passed by an authority which lacked inherent jurisdiction would be ultra vires. (See Kiran Singh v. Chaman Paswan [(1955) 1 SCR 117 : AIR 1954 SC 340].)

22. Thereafter, the ratio in Ganeriwal's case and Charusheela Dasi was also recorded as follows:

25. In Anant Prasad Lakshminivas Ganeriwal v. State of A.P. [1963 Supp (1) SCR 844 : AIR 1963 SC 853] this Court relying on its earlier decision in State of Bihar v. Charusila Dasi [1959 Supp (2) SCR 601 : AIR 1959 SC 1002] opined : (SCR p. 856)

"This decision in our opinion makes it abundantly clear that, where the trust is situate in a particular State, the law of that State, will apply to the trust, even though any part of the trust property, whether large or small, is situate outside the State where the trust is situate."

23. In the circumstances, this judgment does not support the contention of the learned Government pleader.

24. The ratio of the above judgments can be summarized to hold that any religious or charitable institution would be governed and regulated by the Endowment Law applicable to the State in which the head quarters of the said institution is situated. In the event of such an institution holding properties, even extensive properties, in any other State, the law applicable to the institution would remain the Endowment law applicable in the State in which it is situated.

25. In these circumstances, it must be held that since the petitioner-sabha is situated in the State of Tamilnadu, the provisions of the Endowments Act, 1987 would not apply to the petitioner-sabha and the registration of the Petitioner sabha, under the provisions of the Endowments Act, 1966 or the Endowments Act, 1987 is not permissible and it is set aside. Consequently, the authorities under the Endowments Act, 1987 cannot interfere with the activities of the petitioner-sabha over the land admeasuring Ac.2.24 cents in Sri Kalahasti.

.26. Accordingly, the Writ Petitions are allowed as prayed for. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

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2022(1) L.S. 147 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ahsanuddin Amanullah

Md. Shaik Moosa & Anr., ..Petitioner
Vs.
State of A.P., ..Respondents

INDIAN PENAL CODE, Sec.498-A r/w.34 – CRIMINAL PROCEDURE CODE, Sec.482 - Petitioners/Accused Nos.3 and 5, preferred petition for quashing of C.C.

HELD: No specific overtact has been narrated in the complaint indicating any criminal involvement of the petitioners - Continuance of criminal proceedings against the petitioners would be an abuse of the process of the Court - Similarly situated accused have already been granted such relief - Criminal Petition stands allowed and the entire criminal proceedings insofar as it relates to the Petitioners/Accused Nos.3 and 5, are quashed.

Mr.G. Sudheer, Representing T.V. Ramana Rao, Advocates for the Petitioners.
Mr. S. Venkata Sainath, Special Asst. Public Prosecutor.Advocates. for the Respondents

O R A L J U D G M E N T

Heard Mr. G. Sudheer, learned counsel, representing Mr. T V. Ramana Rao, learned counsel for the petitioners and Mr. Soora Venkata Sainath, learned Special Assistant Public Prosecutor, for the State. Despite name of learned counsel for the respondent no.2, Mr. K. Srinivas, being printed in the cause list, nobody appeared on his behalf when the matter was taken up.

2. The petitioners, who are accused nos.3 and 5, have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of C.C. No.518 of 2012, pending on the file of IV Additional Judicial Magistrate of First Class, Tirupathi, Chittoor District.

3. Respondent no.2, who is the complainant, has alleged that she was working as Staff Nurse in Samatha (Saudi) and came in contact with accused no.1, Mohd. Idris, who was an employee in Riyadh, and the acquaintance resulted in their marriage on 15.05.2006 and further she had given Rs.4 lakhs to the accused no.1 for purchasing a house. It is alleged that she gave birth to a female child on 17.03.2007 from the wedlock but the accused no.1 left her, leading her to file the present case alleging that she had been harassed by her husband. Based on her complaint, Crime No.11 of 2010 was instituted for offence under Section 498-A R/w.34 of the Indian Penal Code, 1860 against seven accused persons and the Police, upon investigation, have submitted charge sheet, vide C.C. No.518 of 2012.

4. Learned counsel for the petitioners submitted that, upon going through the entire

complaint, there is no allegation which would disclose any criminal liability on them and only because the petitioner no.2 herein is the sister of the husband of the respondent no.2/complainant, and the petitioner no.1 is her husband, they have been made accused. It was submitted that the criminal proceeding against the petitioners is an abuse of the process of the Court. Learned counsel submitted that identically situated accused nos.4 and 6, who are another sister and brother-in-law of the husband of the respondent no.2, had moved this Court in Criminal Petition No.1430 of 2013 against the same charge sheet and, by order dated 26.04.2013, the Criminal Petition has been allowed.

5. Learned Special Assistant Public Prosecutor submitted that though the allegation is against the petitioners being party to the harassment faced by the respondent no.2 from her husband, who is the accused no.1, but fairly conceded that the case of the petitioners stands on identical footing to that of the petitioners of Criminal Petition No.1430 of 2013.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and upon going through the materials on record as also the allegation made in the written complaint submitted by respondent no.2, the Court finds that no specific overt act or instance has been narrated in the complaint indicating any criminal involvement of the petitioners. Thus, the continuance of criminal proceedings against the petitioners would be an abuse of the process of the Court. Further, the Court would note that similarly situated accused have already been granted such relief.

7. Accordingly, the Criminal Petition is allowed and the entire criminal proceedings arising out of Crime No.11 of 2010 and C.C. No.518 of 2012, on the file of IV Additional Judicial Magistrate of First Class, Tirupathi, Chittoor District, insofar as it relates to the petitioners/accused nos.3 and 5, are quashed.

8. Miscellaneous Applications, if any pending, also stand disposed of.

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(d) On the basis of the assurances given by A1 with regard to transfer/deposit of all payments relating to the contract in question, into an Escrow account, a tripartite agreement dated 10.12.2007 was executed between the complainant, A1 and the Punjab National Bank. In pursuance thereof, a segregated and irrevocable Escrow agreement in the name and style of Punjab National Bank – A/c Prithvi Information Solutions Limited (Escrow account) No.4437002100000506 was opened. A11 signed the Escrow agreement on behalf of A1. Under the terms of Escrow agreement, the accused persons agreed that the cheques would be drawn in favour of the Escrow account; the cheques would contain endorsements "Not negotiable/account payee or beneficiary only" clearly on the face of the cheque drawn; the cheques would be deposited directly to PNB where Escrow account was being maintained and further the term 'cheque' wherever used under the agreement would deem to include the payment made by BSNL through telegraphic transfer or any other mode.

(e) A1 Under letter dated 01.12.2007, addressed to the Joint Deputy Director General (MM), BSNL, informed the details of the Escrow agreement. BSNL was requested to register the Escrow account number and issue letter of confirmation. BSNL vide letter dated 05.12.2007 agreed to conform to the aforesaid payment mechanism. BSNL further clarified that necessary instructions would be made to the paying authorities at the time of placing a formal purchase orders. Subsequently, a formal purchase order bearing No.CT/PO/31/2007/08 dated 04.01.2008 was issued by BSNL in favour of A1 company for procurement of goods mentioned therein. The details of the Escrow agreement were duly mentioned in the formal purchase order. The equipment supplied by the complainant with relevant invoices was duly received and accepted by BSNL.

(f) At no point of time, the accused or BSNL raised any issue with regard to the quality of the equipment. The complainant raised on the accused company invoices amounting to Japanese Yen Five billion, Fifty Two Million, One Thousand and Nine Hundred and Ninety Nine as price of goods supplied. As no payments were received in the Escrow agreement, the complainant began to suspect that something was wrong. When the complaint questioned the accused, they gave evasive replies stating that they will take up the matter with BSNL. The complainant repeatedly insisted the accused in the months of October, November and December 2008 enquiring as to why remittances have not been received in the Escrow account. The accused informed the complainant that some payment has been received from BSNL, but that payment has been mistakenly sent by BSNL to another bank account in respect of some other contract the accused had entered into with BSNL. The accused undertook to make good the payment received by forwarding the same to Escrow account and the same is affirmed vide letter dated 06.02.2009. Despite numerous requests, the accused refused to furnish the details of payment which have been received from BSNL and which had mistakenly been forwarded to another account of A1.

(g) On 13.02.2009, the complainant sent

a notice to the accused persons demanding transfer of all payment received by them against goods supplied to BSNL into the Escrow account together with delayed interest. The accused persons were requested to furnish details of the account into which the amount was received directly from BSNL. In response thereto, the accused have sent letter dated 19.02.2009 wherein they acknowledged the liability and agreed to make good the payment against the goods supplied by the complainant in compliance of the terms and conditions of the Escrow agreement. The accused issued letter dated 26.02.2009 to PNB instructing the bank to remit a sum of Rs.27,57,00,000/- to the complainant. On various occasions the accused company admitted the liability due to the complainant company.

(h) A joint meeting was held on 03.03.2009 and a statement of account for 10G DWDM – Project as on 28.02.2009 was signed confirming the outstanding payable on the said date. Again vide letter dated 30.03.2009 the accused admitted the liability and proposed a revised the payment schedule, which was not accepted by the complainant. The complainant through its counsel moved applications before the BSNL under the Right to Information Act. Pursuant to which it was revealed that prior to 30.10.2008 the accused with malafide intention has given Form II to BSNL requesting it to forward payment to account of A1 held with Axis Bank. The complainant has further discovered that the accused had issued a letter dated 05.11.2008 to BSNL wherein they have asked for amendment of change of payment conditions citing some change in their accounting arrangements. The responses to the RTI applications clearly showed that the accused deliberately mislead the complainant that BSNL has mistakenly forwarded some payments to another account of the accused in respect of another contract of the accused with BSNL. The RTI replies clearly evidenced that there was no such contract with respect to which payments were due and payable by BSNL to A1 at the relevant time. Thus, the malafide intention of the accused persons is evident from the fact that a mere perusal of the letter dated 05.11.2008 clearly showed the change of payment schedule happened around the same time when the payment became due and payable by BSNL and receivable by the complainant. The accused persons in connivance and conspiracy with one another have instructed BSNL to await the details of the bank where the money was to be diverted.

(i) The malafides of the accused are further clearly evident from the fact that the first payment from BSNL, Kolkata (Eastern Circle) was made on 18.02.2009, which was after A2's written admission dated 06.02.2009 referred to above. The accused persons in contravention of the agreement between the parties and with a view to defraud the complainant and misappropriate the amount in question, had issued mandates to BSNL to transfer the payments against the goods supplied to Axis Bank Account No.068010200009317 instead of Escrow account. On receipt of letter of A1 dated 05.11.2008, BSNL vide letter dated 05.11.2008 agreed to amend the banking arrangement for payment as postulated under purchase order dated 04.01.2008. At no point of time, the complainant was intimated nor was it's consent taken with regard to change in routing of payments.

The accused acted unilaterally and even attempted to cover up their acts with other lies thereby clearly establishing their dishonest intention to cause wrongful loss to the complainant and wrongful gain to themselves.

(j) The circumstances under which the accused were able to circumvent the Escrow agreement, suggest the involvement of certain officers of BSNL. The complainant reserves the right to initiate appropriate proceedings/lodge complaint in this regard, in due course, after their identity is established. The complainant took up the matter several times with A2, A3 and A4. The accused persons made series of misrepresentations to the complainant. By letter dated 27.03.2009, A9 asked BSNL to revert back to the payment procedures contemplated under the supply agreement. However, to cover up the fact that the accused has intentionally instructed BSNL to make payment to a personal account in direct contravention of the supply agreement, the accused presented to the complainant with an alternative letter addressed to BSNL and similar letter dated 23.07.2009 asking BSNL to make payment into the Escrow account. However, in the latter letter, the accused deliberately omitted any reference to its previous instructions to divert funds on its own. The accused created the latter letter only for the purpose of hiding from the complainant its previous improper instructions to BSNL. It is, thus, alleged that the accused from inception of agreement in question had the intention of defrauding the complainant of very large sums of money. Thus, the accused persons are liable to be prosecuted for the offences under Sections 405, 406 and 409 IPC. The accused are also liable for the offence of cheating under Section 420 IPC and the criminal acts are performed with a common intention attracting punishment under Section 34 IPC.

6. Mr. C. Sharan Reddy, learned counsel, representing Mr. A. Hariprasad Reddy, learned counsel for the petitioners submitted that on the private complaint lodged by the complainant, the learned Magistrate, after recording and considering the sworn statements, took the complaint on file under Sections 406 and 420 IPC read with Section 34 and 120B IPC, as against the accused vide order dated 25.01.2010. The petitioners/ accused are falsely implicated in the case only on the ground that they are Directors and employees of the A1 company. There is no allegation that the petitioners have ever met or induced the complainant or its officers to enter into an agreement with A1. There is also no allegation that the petitioners have ever made any assurance or given any undertaking that the amounts would be transferred into the Escrow account. The petitioners have not sent any correspondence, letter of undertaking or agreement on behalf of A1 company. The petitioner No.1/A3 resides in USA. Petitioner Nos.2 and 3 (A6 and A8) are independent directors and they have nothing to do with the day-to-day affairs of the company. There is no allegation that these transactions were placed before the Board of Directors and they have approved the action of A2, A9 and others who, allegedly, gave the assurances.

7. Learned counsel further submits that the complainant gave twist to the civil disputes concealing the facts, events and arbitrations

proceedings in Singapore in accordance with L.C.I.A. Rules applicable to the court of International Arbitration at Singapore and ultimately, knocked the doors of judiciary at USA. The complainant also filed the present complaint under Section 200 Cr.P.C and tactfully caused issuance of process against the petitioners despite further amount pending with BSNL around Rs.30 crores as payable to A1 company. The complainant and manufacturer viz. HUAWEI company are being responsible for the show cause notice of DRI dated 30.07.2009 to A1 and consequently, surmised different places of manufacturer, complainant, accused and VMCN and seized records with the allegations of custom duty evasion, humiliating all the directors including executive staff of A1 company resulting in substantial loss of image and reputation of the A1 company. But for interference of DRI on the alleged lapses of the complainant or manufacturer, the present issue would not have resulted and A1 company would not have sustained huge loss by way of foreign exchange. The breach of assurances or undertaking is only a civil wrong and all the directors cannot be prosecuted for breach of trust or cheating. There is no material to warrant an inference that all the directors entered into criminal conspiracy to cheat the complainant. Thus, continuation of criminal proceedings against the petitioners is nothing but an abuse of process of law.

8. Learned counsel for the petitioners, relied on the judgments of the Supreme Court in **MAKSUD SAIYED v. STATE OF GUJARAT** (2008) 5 SCC 668) and **SUNIL BHARTI MITTAL v. CENTRAL BUREAU OF INVESTIGATION** (2015) 8 SCC 609).

9. On the other hand, Mr. Rajesh Maddy, the learned counsel for the respondent No.1 submitted that the instant quash petition is not maintainable. The accused are clearly under the control and management of A1 company and are watchdogs and conscience keepers of the A1 company being independent directors. They are fully conversant and informed of the affairs of the A1 company, at such time of misappropriation of funds and cheating was ordained against the complainant company. It is well settled that in certain cases, the very same set of facts may give rise to remedies in civil as well as criminal proceedings. Even if civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. The present criminal petition is premature as crucial evidence pertaining to the matter is yet to be recorded by the learned Magistrate. The criminal complaint cannot be treated as an exhaustive encyclopedia of the facts of the case and precise involvement of each individual accused can only be established at the stage of trial. There are several disputed questions of which do not fall within the jurisdiction of this Court under Section 482 Cr.P.C. Recording of evidence and examination of witnesses has commenced before the learned Magistrate. The sequence of events indicate that there was deep rooted conspiracy to cause substantial loss to the complainant company and all the accused are jointly and severally liable for the acts committed by A1 company.

10. In support of his contentions, the learned counsel for the respondent No.1 relied upon the following decisions of the Supreme Court:

AJOY KUMAR GHOSE v. STATE OF JHARKHAND (2009) 14 SCC 115); **STATE (NCT OF DELHI) v. SURESH GAUTAM** (2019) SCC Online Del 8493); **INTEGRATED FINANCE CO. LTD. v. P.G. THOMAS PUTHENPURAYIL** (2012) SCC Online Ker 29378); **MOHAMMAD BASITODDIN v. STATE OF MAHARASHTRA** (2012) SCC Online Bom 210); **KOPISETTI SUBBHARAO v. STATE OF A.P.** (2009) 12 SCC 331); **N. RANGACHARI v. BHARAT SANCHAR NIGAM LTD.** (2007) 5 SCC 108); **K. JAGDISH v. UDAYA KUMAR G.S. (**AIR 2020 SC 936); **STATE OF A.P. v. GOLCONDA LINGA SWAMY** (2004) 6 SCC 522); **STATE OF HARYANA v. CH. BHAJAN LAL** (1992) SUPP. (10 SCC 335) and **DINESH CHANDUBHAI PATEL v. STATE OF GUJARAT** (2018) 3 SCC 114).

11. Heard the learned counsel for the petitioners and the learned counsel for the respondent No.1/complainant.

12. There are two agreements viz. one is the supply agreement with respect to procurement of 40 channels DWDM equipment (supply agreement dated 29.11.2007) and another is Escrow account agreement dated 10.12.2007. The supply agreement dated 29.11.2007 is entered into between the complainant company and A1 company. On behalf of A1 company, Mr. A.N. Sharma Head – Legal and Company Secretary, signed the agreement. The Escrow agreement was entered into between A1 company, complainant company and PNB. On behalf of A1 company, the agreement was signed by A11, as Vice President of the company.

13. The grievance of the complainant company is that the terms and conditions of the Escrow agreement have been violated. There was breach by the accused persons in complying with the terms and conditions of the Escrow account agreement. The petitioners/herein are not the signatories of the supply agreement or the Escrow agreement. Though general allegations have been made here and there in the complaint that all the accused persons have conspired and have connived to cause wrongful loss to the complainant, there is no specific statement made to show the involvement of the petitioners/accused in the Escrow account agreement and violation of the terms and conditions contained therein. Insofar as A3, A12 and A14 are concerned, certain allegations are made against them. For instance, as against A3, it is stated that she is the Chairperson of A1 company and inter alia, looks after the affairs of the company in the US. A12 is stated to be based in Delhi and it was alleged that he was interacting that complainant's representatives on regular basis. It is stated that A9 and A12 made numerous misrepresentations to the representatives of the complainant company. As regards A13 it is alleged that he with active support of A2 and A3 held himself to be an adviser of A1 company and attended most of the meetings at Hyderabad and actively involved in misrepresentations and made false undertaking given to the complainant. A12 was further said to have attended meetings at Hyderabad on 02.07.2007 and 17.08.2007 between the complainant's representatives and accused persons and also at Delhi and assured that if the complainant extended trade finance to the accused company, there would be no delay in repayment of the

amounts. It is also alleged that the complainant took up the issue with A2, A3 and A4 but satisfactory explanation was not given by them and requested the complainant not to initiate any proceedings and undertook to start making payment to the complainant forthwith.

14. This Court is of the opinion that merely because A3 is the Chairperson, she cannot be prosecuted as no specific role is attributed to her in the instant complaint. As against A12 and A13, though there is an allegation of misrepresentation and assurance of payment, the same cannot be a ground to prosecute them since it is not the assurance of payment for which the accused are being prosecuted. The cause of action for filing the complaint was when there was alleged violation of the Escrow agreement and diversion of funds to which none of the petitioners/accused herein including A3, A12 and A13 are parties and no specific role is attributed to them.

15. In **MAKSUD SAIYED'**s case (1 supra), the Supreme Court held as under:

"**12.** In Saroj Kumar Poddar v. State (NCT of Delhi) [(2007) 3 SCC 693 : (2007) 2 SCC (Cri) 135 : (2007) 2 Scale 36] this Court held: (SCC p. 697, para 14)

"14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act." [See also Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi [(2007) 5 SCC 54 : (2007) 2 SCC (Cri) 444 : JT (2007) 5 SC 529] and S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2007) 4 SCC 70 : (2007) 2 SCC (Cri) 192 : (2007) 3 Scale 245].]

13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

15. This Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] held as under: (SCC p. 760, para 28)

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The learned Magistrate, in our opinion, shall have kept the said principle in mind.

16. In **SUNIL BHARTI MITTAL's** case (2 supra), the Supreme Court made the following observations:

(**iii**) **Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person**

42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

45. This very principle is elaborated in various other judgments. We have already taken note of Maharashtra State Electricity Distribution Co. Ltd. [Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd., (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] and S.K. Alagh [S.K. Alagh v. State of U.P., (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] . A few other judgments reiterating this principle are the following:

45.1. Jethsur Surangbhai v. State of Gujarat [1984 Supp SCC 207 : 1984 SCC (Cri) 474] : (SCC pp. 210-11, para 9)

"9. … With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close

cohesion and collusion between all the accused which formed the subject-matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for Items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tahsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as Item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant."

(emphasis supplied)

45.2. Sham Sunder v. State of Haryana [(1989) 4 SCC 630 : 1989 SCC (Cri) 783] : (SCC p. 632, para 9)

"9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

(emphasis supplied)

45.3. Hira Lal Hari Lal Bhagwati v. CBI [(2003) 5 SCC 257 : 2003 SCC (Cri) 1121] : (SCC p. 277, para 30)

"30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been thereinunder wholly discharged and the GCS granted immunity from prosecution."

(emphasis supplied)

45.5. R. Kalyani v. Janak C. Mehta [(2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567] : (SCC p. 527, para 32)

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

45.6. Sharon Michael v. State of T.N. [(2009) 3 SCC 375 : (2009) 2 SCC (Cri) 103] : (SCC p. 383, para 16)

"16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company."

(emphasis supplied)

45.7. Keki Hormusji Gharda v. Mehervan Rustom Irani [(2009) 6 SCC 475 : (2009) 2 SCC (Cri) 1113] : (SCC pp. 480-81, paras 16-19)

"16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal

fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

18. In Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] this Court held as under : (SCC p. 760, para 28)

'28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.'

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure."

47. We have already mentioned above that even if CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of First Class (and in those cases where Magistrate of the Second Class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts; and

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

This section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression "taking cognizance" has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken

cognizance of an offence. This legal position is explained by this Court in Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] in the following words : (SCC p. 499, para 19)

"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it connoted 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence."

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

17. The decisions relied upon by the learned counsel for the respondent No.1 viz. **AJOY KUMAR GHOSE'**s case (3 supra); **STATE (NCT OF DELHI)'**s case (4 supra)**; INTEGRATED FINANCE CO. LTD.'**s case (5 supra) and **MOHAMMAD BASITODDIN'**s case (6 supra) deal with the proceedings arising out of discharge petitions filed before the trial Court under Section 245 of Cr.P.C and connected provisions. By placing reliance on these decisions, the learned counsel for the respondent No.1 contended that the analogy, underlying the provisions under Sections 238, 239, 244 and 245 Cr.P.C., applicable to discharge petitions is applicable even to the petitions filed under Section 482 Cr.P.C. It would be premature to entertain a quash petition at this stage, more particularly, because the material before the trial Court is only the complaint and the relevant documents, based on which the Court below took cognizance, on being satisfied, that prima facie there is a case to proceed against all the accused. If the quash petition is entertained, at this stage, valuable right of the complainant is lost, as the complainant otherwise would have had the opportunity to lead evidence before the trial Court at two stages i.e. before framing charge and after framing charge (paras 19, 20 and 22 in **AJOY KUMAR GHOSE'**s case (3 supra) in the cases instituted otherwise than police report. The ratio laid in the judgments (supra) is not applicable to the facts of this case, as this Court is not dealing with an order arising out of a discharge petition. The learned counsel has not brought to the notice of this Court any judgment of either the Supreme Court or any other High Court to buttress his argument that the analogy under Sections 238, 239, 244 and 245 Cr.P.C. has to be applied to petitions under Section 482 Cr.P.C. Hence, the judgments are of no assistance to the respondent No.1.

18. The judgment in **KOPISETTI SUBBHARAO**'s case (7 supra) is distinguishable on facts. The Supreme Court upheld the order of the High Court dismissing the quash petition on the ground that there are disputed questions of fact. In **N.**

RANGACHARI's case (8 supra), the Supreme Court has taken note of the averments in the complaint filed under Section 138 read with Section 141 of the Negotiable Instruments Act (N.I. Act) and came to the conclusion that the requirement under the said provisions is satisfied wherein there was an averment in the complaint that the appellant and another were directors of the company and in-charge of the affairs of the company and that the burden is on the Board of Directors, in-charge of the affairs of the company, to show that they are not liable to be convicted and such contentions can be dealt with after conclusion of trial (Paras 18 and 19). The deemed liability of the directors of a company as provided under Section 141 of the N.I. Act cannot be applied to the criminal proceedings under IPC.

19. The proposition of law laid down in **K. JAGDISH**'s case (9 supra) is that in certain case same set of facts may give rise to remedies in civil law as well as in criminal proceedings and by availing civil remedy, the appellant is not precluded from setting in motion proceedings under the criminal law. However, the same is not the issue involved in the instant case.

20. In **GOLCONDA LINGA SWAMY**'s case (10 supra), the Supreme Court set aside the order of the High Court quashing the FIR registered for the offence under the A.P. Excise Act, 1968 and A.P. Prohibition Act, 1995. The allegation against the accused was regarding transportation and storing of black jaggery or molasses for the purpose of manufacturing illicit distilled liquor or was an abettor of such offence. The High Court quashed the FIR holding that there is no material to show that seized articles are intended to be used for manufacturing distilled liquor. The Supreme Court held that the inherent power of the High Court should not be exercised to stifle a legitimate prosecution and the High Court should refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when evidence has not been collected and produced before the Court and issues involved whether factual or legal are of magnitude and cannot be seen either in true perspective without sufficient material (para 8). It was further held that though the FIR is not intended to be an encyclopedia of background scenario, yet even skeletal features must disclose commission of offence. (para 12)

21. In **CH. BHAJAN LAL'**s case (11 supra), the order of the High Court quashing the FIR as being vitiated by political considerations and the matter therein related to initiation of criminal proceedings by the incoming Government in connection with the commissions and omissions of outgoing Government. The view of the High Court was disapproved by the Supreme Court. In **DINESH CHANDUBHAI PATEL'**s case (12 supra) the order of the High Court quashing the investigation came up for consideration before the Supreme Court. It was held that the order of the High Court did not advert to the merits of the case within the guidelines laid down in **CH. BHAJAN LAL'**s case (11 supra). The ratio laid down in these two cases is not applicable to the facts of the present case.

22. It is not in dispute that the petitioners/ accused are not signatories to the Escrow agreement. Neither the role of the petitioners

is explained nor their involvement is spelt out in the complaint averments. Apart from the fact that there is no specific allegation against the petitioners, there is no material on record to show that the petitioners have any control over the management and affairs of the A1 company. The main grievance of the complainant company is regarding violation of the terms and conditions of the Escrow agreement. The signatory of the Escrow agreement, the managing director and other accused who are responsible for violation of the Escrow agreement, false representations, diversion of funds to another account etc. may be liable for prosecution. But coming to the petitioners/accused herein, there are no such allegations. Nothing is attributed against the petitioners as to the manner in which they are responsible for the affairs of the company and breach of terms and conditions of the Escrow agreement.

23. The High Court while exercising jurisdiction under Section 482 Cr.P.C. cannot enter into disputed questions of fact. But in the instant case, the allegations are on the basis of documentary evidence to which none of the petitioners are parties. Without knowing the actual role of the petitioners and in what manner they have participated in the affairs of the company, it would be unjust to rope in the petitioners in the criminal proceedings. On the basis of the record, this Court finds that there is no prima facie material to prosecute the petitioners merely because they are the directions of the A1 company. It is not as if every director of the company has to be presumed to be responsible for the actions of the company. A director in a company has got a limited role in the affairs of the company. However, a director may be entrusted with some responsibility touching upon the management of the company and he/she may be acting under different designations. The complainant may not be having knowledge of such responsibilities of the directors. But, on assumptions and presumptions, it would be unjust to prosecute the directors whose role is not prima facie made out in the management of the day-to-day affairs of the company.

24. The vicarious liability of the Chairman, Managing Director, Directors and Officers in-charge of a company under criminal law cannot be presumed unless the statute specifically provides for the same. For instance, for the offence under Section 138 of the Negotiable Instruments Act, the vicarious liability is provided for under Section 141 of the Act. Such similar provision is not available for the offences under the Indian Penal Code. In **SHIV KUMAR JATIA v. STATE OF NCT OF DELHI** (2019) 17 SCC 193), the Supreme Court dealing with the concept of vicarious liability in criminal matters made the following observations: "**19.** The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of Sunil Bharti Mittal [(2015) 4 SCC 609]. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent

and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious etc. liability unless the Statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

…

21. By applying the ratio laid down by this Court in the case of Sunil Bharti Mittal it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of Maksud Saiyed vs. State of Gujarat & Ors. [(2008) 5 SCC 668] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. It is further held that Statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

22. In the judgment of this Court in the case of Sharad Kumar Sanghi vs. Sangita Rane [(2015) 12 SCC 781] while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 of Cr.P.C. In the case on hand principally the allegations are made against the first accused-company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is Accused 2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company. In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."

25. In the facts and circumstances of the case, this Court, having perused all the documents, is of the view that there is no

material on record nor any case is made out to proceed against the petitioners. In the event any evidence is let in by the complainant showing complicity of the petitioners during trial, the complainant is always entitled to proceed against the petitioners by filing an application under Section 319 Cr.P.C as held by the Supreme Court in **SUNIL BHARTI MITTAL's** case (2 supra).

In view of the above observations, the criminal petitions are allowed and the proceedings in CC.No.140 of 2010 on the file of the IX Metropolitan Magistrate, Miyapur, Ranga Reddy District, against the petitioners/accused, are hereby quashed. Pending miscellaneous petitions, if any, shall stand closed.

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2022 (1) L.S. 105 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Venkateshwara Reddy

Mr.R.Neel Kumar ..Petitioner

Vs.

R. Dhanalakshmi ..Respondent

HINDU MARRIAGE ACT, Sec.13(1)(ia) - LIMITATION ACT, Sec.5 -Petitioner/Husband preferred Civil Revision assailing the Orders in I.A. in HMOP - Petitioner has filed HMOP under Act seeking divorce, wherein, an ex parte decree was passed - Immediately on receipt of notice from the Court in divorce O.P., wife along with her well-wishers and parents went to the house of the husband, a panchayat was held, wherein, the husband having satisfied, agreed to withdraw the OP and requested the wife to stay with her father, who was sick - It was only that when her father died while taking treatment and when she informed the husband, she has come to know about the ex parte divorce decree.

Respondent/Wife filed an application under Section 5 of the Limitation Act, to condone the delay of 270 days along with interlocutory application vide I.A. under Or.IX, Rule 13 of CPC to set aside the ex parte judgment and decree of divorce in HMOP –Trial Court, condoned the delay of 270 days in filling the application under Order IX Rule 13 CPC.

HELD: There cannot be any straight-jacket formula of universal application to condone the delay and "sufficient cause" under Section 5 of the Limitation Act is only a question of fact and the Court has to exercise its judicious discretion to meet the ends of justice - Though under Section 15 of the Hindu Marriage Act, a divorced person is entitled to marry again after expiry of appeal time, that by itself does not make the application filed either under Section 5 of the Limitation Act or under Order IX Rule 13 of CPC, infructuous - In the present case, the respondent-wife was able to explain the delay of 270 days stating believing

CRP.No.686/2021 Date: 23-11-2021

the words of her husband she stayed back with her father who was bed-ridden and that she was totally occupied in looking-after her father and only after his death, when she informed the fact to her husband, she came to know about the ex parte decree of divorce - Civil revision petition is dismissed.

Mr. Umesh Chandra PVG, Advocate for the Petitioner.
Mr. Kumar Samuel, Advocate for the Respondent.

O R D E R

1. The petitioner-husband has filed this Civil Revision Petition under Article 227 of the Constitution assailing the orders dated 5th January 2021 in I.A.No.300 of 2020 in HMOP.No.55 of 2019 on the file of learned Senior Civil Judge, Medak at Sangareddy.

2. Brief facts :- The revision petitioner is the petitioner in HMOP.No.55 of 2019, filed an application under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of his marriage dated 15.04.2006 with the respondent-wife on certain allegations. Notice was served in that O.P., but, inspite of receipt of notice, respondent-wife remained absent. Consequently, she was set ex parte and on the next date of hearing, evidence of petitioner-husband was recorded as PW-1, Exs.A-1 to A-3 documents were marked and on the same day, petition was allowed and the marriage between the petitioner and respondent was dissolved. Respondent-wife has come to know about the same only when she has sent information to the petitioner about the death of her father on 26.07.2020. On receiving such information, it appears the petitioner-husband has stated that he is in no way concerned with the respondent as the marriage was dissolved, judgment was delivered on 27.09.2019 itself. Then the respondent herein has consulted her counsel and filed an application vide I.A.No.300 of 2020 under Section 5 of the Limitation Act, to condone the delay of 270 days along with interlocutory application vide I.A.No.363 of 2020 under Order IX Rule 13 of CPC to set aside the ex parte judgment and decree of divorce dated 27.09.2019 in HMOP.No.55 of 2019. The learned Senior Civil Judge, Medak at Sangareddy, while dealing with the application under Section 5 of the Limitation Act in I.A.No.300 of 2020 in the said HMOP, condoned the delay of 270 days in filling the application under Order IX Rule 13 CPC. In para 6 of the order impugned, it is observed that the petitioner-wife has specifically stated that the respondent-husband has promised that he will withdraw the divorce petition on the next date of hearing and requested her to stay with her parents for few days as her father was ill. Believing the words of the husband, the wife stayed back with her parents. In the meanwhile, her father, while undergoing treatment, died on 26.07.2020.

3. In support of the petition filed under Section 5 of the Limitation Act, the respondent-wife has filed her affidavit before the trial Court, wherein, it is averred at para 3 that originally, the said HMOP.No.55 of 2019 was posted to 04.09.2019 for her appearance and when she was absent, she was set ex parte. In fact, from 10.03.2019

onwards, when she was necked out from her matrimonial house, she has been living with her old-aged parents and immediately on receipt of notices in HMOP.No.55 of 2019 a panchayat was held, she along with her family members and well-wishers, went to the house of husband, questioned about filing of divorce case, matter was amicably settled in the presence of elders and the husband has agreed to take back her into his conjugal society with a promise that he will withdraw the divorce O.P. filed by him and also requested her to stay with her parents for some time as her father fell seriously ill. The wife, who is the petitioner in I.A.No.300 of 2020 filed under Section 5 of the Limitation Act, has clearly explained in her affidavit that believing the words of her husband, she kept silent and stayed with her parents and when her father died, on 26.07.2020, she sent a message to her husband. Then the true facts have come to light to the effect that instead of withdrawing the divorce O.P.No.55 of 2019, he has pursued it, obtained an ex parte decree behind and her back. Accordingly, she consulted her counsel immediately and filed a petition on 3rd August 2020. Thus, the delay of 270 days in filing the application under Order IX Rule 13 CPC is not at all intentional, but as she bonafidely believed the version of her husband, stayed with her parents, attending her father who was sick.

4. This application was resisted before the trial Court by the husband, who filed a detailed counter affidavit stating that as per Section 15 of the Hindu Marriage Act, a divorced person is entitled to marry after expiry of appeal time. Since he obtained decree of divorce on 27.09.2019 and the appeal time of 90 days expires on 27.12.2019, he has re-married another lady on 29.02.2020, the marriage was consummated and they were blessed with a female child on 23.09.2020. Thus, no cause survives for filing the application. Death of the father of the petitioner on 26.07.2020 cannot be a ground to condone the delay of 270 days as she was set ex parte on 04.09.2019 and that the delay from 04.09.2019 to 25.07.2020 is not properly explained. Further, it is alleged in the counter that the wife has also filed a Criminal Case for the offences under Sections 498-A, 406 and 506 of IPC on 22.07.2019 vide Crime No.150 of 2019 and that he was arrested by the Police, hence, she is aware of all the proceedings and not entitled for condoning the delay.

5. This Civil Revision Petition is filed assailing the order dated 05.01.2021 in I.A.No.300 of 2020 in HMOP.No.55 of 2019 on the ground that the petitioner had obtained ex parte decree of divorce on 27.09.2019; that the respondent did not appear before the Court and failed to contest the matter inspite of receipt of notice and summons; she has suppressed the fact that an FIR is issued against the petitioner in the month of March 2019, as she had rampaged the house of the brother of the petitioner. In fact, immediately after the ex parte order, the petitioner has filed a case in Crime No.150 of 2019 before the Women Police Station, Charminar for the offences under Sections 498-A, 406 and 506 of IPC.

6. The learned counsel for petitioner has strenuously contended that the Hindu Marriage Act is a special enactment and the provisions of Section 15 of the Act

enable the petitioner to marry again after the appeal time is over and Section 28(4) provides for an appeal and the period of limitation for filing the appeal is 90 days from the date of decree or order and that Section 29(3) of the Limitation Act clearly envisages that with respect to the marriage and divorce, nothing in the Limitation Act shall apply to any suit or proceedings under any such law. Accordingly, the learned Senior Civil Judge, Sangareddy has erred in condoning the delay of 270 days and the said order is liable to be set aside.

7. Whereas, the learned counsel for respondent contended that the provisions of Section 5 of the Limitation Act would apply to the proceedings under Order 9 Rule 13 CPC under the Hindu Marriage Act also and the matter is no more res integra. The Hon'ble Supreme Court has held in several decisions that the wife is entitled for filing an application under Order IX Rule 13 of CPC along with application under Section 5 of the Limitation Act to condone the delay and that this Court also, in the case of **Miryala Kavitha v. Miryala Krishnaiah**2004 (3) ALD 690, has condoned the delay of 122 days in filing the petition under Order IX Rule 13 of CPC.

8. The learned counsel for respondent has also relied upon the following decisions; (1) **Sm.Sipra Dey v. Ajit Kumar Dey**AIR 1988 Calcutta 28, (2) **Lokeshwari v. Srinivasa Rao**2000 (3) ALD 350, (3) **Arun Kautik Pawar v. Sau Laxmi Arun Pawar**[4] and 1985 (2) BomCR 619 (4) **Darshana Devi v. Bodh Raj & another**High Court of J&K in C.Ref.No.1 of 2004, dt.19.12.2013.

9. The revision petitioner-husband has filed HMOP.No.55 of 2019 under Section 13(1)(ia) of the Hindu Marriage Act seeking divorce, wherein, the wife was set ex parte on 04.09.2019. Later, after examining the husband as PW-1 and marking the documents Exs.A-1 to A-3, an ex parte decree was passed on 27.09.2019. When the wife has come to know about the ex parte decree after the death of her father, she immediately consulted her counsel and filed the application under Section 5 of the Limitation Act on 3rd of August 2020. Thus, there is a delay of 270 days. She has tried to explain that immediately on receipt of notice from the Court in divorce O.P., she along with her well-wishers and parents went to the house of the husband, a panchayat was held, wherein, the husband having satisfied, agreed to withdraw the OP and requested the wife to stay with her father, who was sick. It was only that when her father died while taking treatment and when she informed the husband on 26.07.2020, she has come to know about the ex parte divorce decree dated 27.09.2019. Till such time, she was unaware of that fact.

10. The only basis for granting a decree of divorce in favour of the husband is the affidavit filed on his behalf as PW-1 and the contents of the documents in Exs.A-1 to A-3 which are marriage photos, wedding card and true copy of the Aadhar Card of the husband respectively. No other material is placed before the trial Court. In similar circumstances, at para 7 of the judgment in **Miryala Kavitha**'s case (supra 1), this Court has held thus;

"It is rather unfortunate that such evidence weighed with the Presiding Officer, herself being a woman, and a decree was granted without any consideration or appreciation of the matter. Time and again, the Supreme Court held that even where the defendant in a suit remained ex parte, the Trial Court is not relieved of its obligation to record findings of various aspects that fall for consideration. Absence of the defendant by itself does not entitle a Trial Court to grant a decree as prayed for. Such a course of action would be contrary to the very adjudicatory process. That, however, is a different aspect touching on the merits of the decree."

11. The respondent herein has approached the trial Court with an application in I.A.No.300 of 2020 to condone the delay that had occurred. She has specifically pleaded that immediately after receipt of notice for the hearing dated 04.09.2019, she approached her husband along with her family members and well-wishers and in their presence, her husband had agreed to withdraw the HMOP filed by him and also agreed to take her back to his conjugal society, however, requested her to stay back with her father, who was sick and taking treatment. It is the case of the respondent-wife that she was taking care of her father, later he died on 26.07.2020. When it was informed to her husband, he denied any such relationship with her stating that he obtained a decree for divorce on 27.09.2019 itself. Then only she has come to know about the ex parte decree of divorce and approached her counsel, filed the application to condone the delay of 270 days and also another application under Order IX Rule 13 of CPC to set aside the ex parte decree.

12. It was not as if the O.P. was pending on the file of trial Court for years together or the petitioner has approached the Court after inordinate delay. In fact, the Court below though not properly assigned any reasons, has rightly concluded that the wife is entitled for condoning the delay of 270 days.

13. While dealing with the applications filed under Order IX Rule 13 of CPC, the Hon'ble Supreme Court in **Parimal v. Veena @ Bharti**(2011) 3 SCC 545, held thus:

"Approach of the Court while dealing with such an application under Order IX Rule 13 C.P.C. would be liberal and elastic rather than narrow and pedantic. However, in case the matter does not fall within the four corners of Order IX Rule 13, the Court has no jurisdiction to set aside ex parte decree. The manner in which the language of the second proviso to Order IX Rule 13 C.P.C. has been couched by the legislature makes it obligatory on the appellate court not to interfere with an ex parte decree unless it meets the statutory requirement. It was not permissible for the High Court to take into consideration the conduct of the appellant subsequent to passing of the ex parte decree."

14. It was a case in which the spouse who obtained the ex parte decree had

remarried. The Hon'ble Supreme Court declined to take into account the remarriage of the spouse as a relevant factor in deciding the merits of an application filed for setting aside the ex parte decree of divorce. Accordingly, while seeking guidance from the above, I am of the firm view that mere re-marriage of the petitioner- husband who obtained ex parte decree of divorce will not render the application to set aside the ex parte decree filed by the wife-opposite spouse infructuous. Re-marriage of the spouse is not a relevant factor to be taken into account in deciding the merits of the application filed for setting aside the ex parte decree of divorce. The application under Order IX Rule 13 of the Code of Civil Procedure has to be considered on its own merits within the four corners of that provision.

15. The another argument of the learned counsel for petitioner is that in view of Section 28(4) of the Hindu Marriage Act and in view of savings Clause under Section 29(3), Section 5 of the Limitation Act does not apply and the learned trial Court has erred in applying the provisions of Section 5 of the Limitation Act. A learned Single Judge of this Court in the decision in **Miryala Kavitha**'s case (supra1), has clearly held that the provisions of Section 5 of the Limitation Act would apply to the proceedings under the Hindu Marriage Act, and an appeal is also maintainable if it is filed beyond the period of 30 days. At that time, 30 days was specified as limitation period under Section 28(4) of the Hindu Marriage Act. The Hon'ble Supreme Court in **Tejinder Kaur v. Gurmit Singh**(1988) 2 SCC 90 and in **Lata Kamat v. Vilas**(1989) 2 SCC 613, held that the party appealing under Section 28(4) of the Hindu Marriage Act is also entitled for exclusion of the time taken by it for obtaining the certified copies of the decree. In **Lata Kamat**'s case (supra 8), the Hon'ble Supreme Court has dealt with the interpretation of suit or other proceedings under Section 29(3) of the Limitation Act and held that the impact of sub-section (3) is concerned, will be that the provisions of Limitation Act will be applied insofar as suit or other original proceedings under the Act are concerned, but sub-section (3) will not govern an appeal. The Hon'ble Supreme Court in **M/S Sahara India And Ors vs M.C. Aggarwal Huf** 2007 (11) SCC 800, held that where no opportunity of hearing has been given and an ex parte order has been passed, the Court should not lose sight of the fact that prejudice will be caused to the other side and consequently restored the case.

16. In the case on hand, the trial Court has clearly recorded that the petitioner-wife had shown sufficient cause that considering the advice of her husband that he will withdraw the divorce O.P. filed by him and asked her to stay back with her father, who was sick, for some more time and she stayed with her father and only after the death of her father, when she had informed about it, she had come to know through the husband that he has obtained divorce then she filed an application under Section 5 of Limitation Act and petition under Order IX Rule 13 CPC. Therefore, there cannot be any straight-jacket formula of universal application to condone the delay and "sufficient cause" under Section 5 of the Limitation Act is only a question of fact

and the Court has to exercise its judicious discretion to meet the ends of justice. Though under Section 15 of the Hindu Marriage Act, a divorced person is entitled to marry again after expiry of appeal time, that by itself does not make the application filed either under Section 5 of the Limitation Act or under Order IX Rule 13 of CPC, infructuous. In the present case, the respondent-wife is able to explain the delay of 270 days stating believing the words of her husband she stayed back with her father who was bed-ridden that she was totally occupied in looking-after her father and only after his death, when she informed the fact to her husband, she came to know about the ex parte decree of divorce. Therefore, in such facts and circumstances of the case, while relying upon the principles laid down by this Court in **Miryala Kavitha**'s case (supra1) and the judgments of the Hon'ble Supreme Court cited above, I hold that the order impugned is sustainable and it does not warrant any interference by this Court.

17. Accordingly, this civil revision petition is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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2022 (1) L.S. 111 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Venkateshwara Reddy

G. Manoharlal, Sec'bad ..Petitioner
Vs.
Dargah hazrat khaja peeran & Anr., ..Respondents

CIVIL PROCEDURE CODE, Or.VI, Rul.17 r/w Sec.151 - Civil Revision, assailing the Order in I.A. filed under CPC, filed by the Petitioners/Plaintiffs for amendment of the plaint schedule property – Trial Court permitted amendment of pleadings.

HELD: Unless the party takes prompt steps, mere action cannot be accepted in filing a petition for amendment of pleadings after the commencement of trial - Plaintiffs are not entitled for amendment of boundaries drastically changing the extent and location of the suit schedule property from that one mentioned in the plaint schedule at the time of filing the suit - A grave mistake was committed by the Court below in considering the application for amendment of the boundaries and there was no due diligence on the part of the plaintiffs in making such an application for amendment of the boundaries of plaint schedule at a belated stage after

conclusion of the trial when the suit was posted for arguments - Civil Revision Petition stands allowed setting aside the impugned order in IA.

Mr.P, Shiv Kumar, Advocate for the Petitioner.
Mr.M.A. Mujjeeb, Advocate for the Respondents.

O R D E R

1. This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 28.08.2015 in I.A. No.216 of 2015 in O.S.No.664 of 2012 on the file of the learned I Junior Civil Judge, City Civil Court, Secunderabad.

2. This application in IA No.216 of 2015 was filed under Order- VI, Rule-17 read with Section 151 of the Civil Procedure Code, 1908 (for short 'CPC') filed by the petitioners/plaintiffs for amendment of the plaint schedule property as under:

Existing boundaries in the Plaint Schedule	To be corrected as
North by : Old grave yard	North by : Old grave yard
South by : Foot path and SubhasRoad	South by : Defendant house No.9-3-278 to 280
East by : Neighbour's house	East by : Passage
West by: Premises No.9-3-280 Belonging to Defendant	West by : Part of Dargah and grave yard

3. The learned Junior Civil Judge having considered the request of the petitioners/ plaintiffs permitted amendment of pleadings correcting the boundaries of suit schedule property on east, west and southern sides i.e., except northern side boundary, all the other boundaries are changed, pursuant to the orders dated 28.08.2015. The respondent/ defendant being aggrieved by the said orders filed this civil revision petition stating that the trial Court ought to have dismissed the petition refusing permission to the plaintiffs to amend the boundaries of plaint schedule property. The trial Court failed to appreciate that there is no due diligence on the part of the plaintiffs and that the proposed amendment is without any sufficient cause and is contrary to the proviso to Rule-17 of Order-VI of CPC. The trial Court ought to have noticed that serious prejudice will be caused to the defendant in view of the said amendment of boundaries of suit schedule property.

4. Heard learned counsel for the revision petitioner/defendant and the

respondents/plaintiffs. Perused the material placed on record

5. For the sake of convenience, the parties are hereinafter referred to as plaintiffs and defendant as arrayed in the original suit.

6. In the Original Suit No.664 of 2012 after filing the written statement by the defendant, issues were settled, evidence of plaintiffs and defendant was completed. While preparing the written arguments, the plaintiffs appear to have noticed that the boundaries subsisting of suit schedule property are not inconformity with Ex.A.13 quite notice and that it is just and essential to change the boundaries, accordingly, filed the application in IA No.216 of 2015 under Order-VI, Rule-17 CPC. The trial Court on analysis of the facts of the case in para 11 of the order impugned held that the plaintiffs have issued Ex.A.13 quit notice, which is in accordance with the stand put forth in their earlier notices Exs.A.10 to A.12. Ex.A.14 is reply notice, dated 18.09.2014 got issued by the defendant in response to the Ex.A.13 quit notice. In Ex.A.14, the defendant never disputed the correctness of boundaries of the suit property. Even in the written statement, the defendant never disputed the boundaries of suit schedule property. Thus, the said mistake is a result of typographical error and non-application of mind by the plaintiffs' counsel while preparing the plaint.

7. With these observations, the application in IA No.216 of 2015 was allowed and the plaintiffs were permitted to amend the boundaries if the suit schedule property on the south, east and western side i.e., except on the northern side, all the three boundaries are changed to the suit schedule property. In the proposed boundaries, the southern side, it is mentioned as defendant house bearing Nos.9-3-278 to 280. Whereas, in the boundaries, as per the plaint schedule, on the western side, it is mentioned as premises No.9-3-280 belonging to defendant. Thus, two more house bearing Nos.9-3-278 and 279 are also added in the proposed boundaries on the southern side when compared with the earlier boundaries on the western side, as indicated above. In the plaint schedule, the southern side boundary is shown as foot path and Subash Road. Whereas, in the proposed boundaries, it is shown as house bearing Nos.9-3-278 to 280 of the defendant. The eastern boundary is shown as neighbour's house, whereas in the proposed boundaries, it is shown as passage. The western boundary is shown as house bearing No.9-3-280 belonging to the defendant in the plaint schedule property, whereas, in the proposed boundaries, it is shown as part of Dargah and grave yard.

8. On a studied examination of pleadings in the plaint and the written statement, the defendant has been denying the extent, location of the suit land and also denying the jural relationship with the plaintiffs as landlord and tenant.

9. By Act No.46 of 1999 there was a sweeping amendment by which Rules 17 and 18 of CPC were omitted, so that the amendment of pleadings was not permissible. Finally, to strike a balance, the Legislature has reintroduced Rule-17 by Act No.22 of 2002 with effect from 01.07.2002.

10. It is this proviso which falls for consideration of the Hon'ble Supreme Court of India in ***Salem Advocate Bar Association v. Union of India***AIR 2005 SC 3353. In paragraph Nos.42 and 43, the Hon'ble Supreme Court has held as under:

> "42. It is to be noted that the provisions of Order 6 Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.
>
> 43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the abvoe requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hestitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule."

11. In ***Vidyabai and oathers v. Padmalatha and others***AIR 2009 SC 1433 at paragraph No.14, it is held by the Hon'ble Supreme Court of India, as under:

> "14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.
>
> However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

12. The Hon'ble Supreme Court in ***Salem Advocate Bar Association***'s case (1 supra) upheld the validity of proviso to Rule-17 of Order-VI CPC.

13. As per the proviso, it is to be established by the party that in spite of "due diligence", the party could not have raised the matter before the commencement of trial depending on the circumstances, the Court is free to order such application. The words "*due diligence*" have not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent

application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per the Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. It means, such diligence as a prudent man would exercise in the conduct of his own affairs. Thus, it is clear that unless the party takes prompt steps, mere action cannot be accepted in filing a petition for amendment of pleadings after the commencement of trial.

14. The details furnished below will go to show as to how the facts of the present case show that the matter which is sought to be raised by way of amendment by the plaintiffs were well within their knowledge before filing the application. The Original Suit No.664 of 2012 was filed on 15.11.2012, written statement was filed on 06.05.2013, before filing the original suit Ex.A.13 quit notice was issued and Ex.A.14 reply was issued by the defendant. It is observed by the learned trial Judge in the order impugned that in Ex.A.13 the very same boundaries that are proposed to be introduced by virtue of this amendment are mentioned. If that be so, the plaintiffs are aware of the boundaries of suit schedule property not only at the time of issuing Ex.A.13, but also at the time of issuing Exs.A.10 to A.12, which are much earlier in time to Ex.A.13. Whether the defendant has denied the boundaries mentioned in Exs.A.10 to A.13 or not is of no consequence, since the defendant has been denying the extent, location of suit schedule property including the jural relationship with the plaintiffs as landlord and tenant at any given time.

15. Be it stated that after filing the written statement, issues were settled, evidence on both sides was completed, and when the matter was posted for arguments, the present application was filed under Order-VI, Rule-17 of CPC on 06.04.2015 and despite the counter filed by the defendant, this application was allowed changing the boundaries of plaint schedule property on south, east and western side. Thus, except the northern side boundary, all the boundaries are changed. In addition to it, on southern side, two more houses are added as house bearing Nos.9-3-278 to 280, whereas in the plaint schedule western side boundary, it is only mentioned as the premises bearing No.9-3-280.

16. Thus, the plaintiffs were having knowledge of boundaries proposed through this application and there was no due diligence on their part at any point of time i.e., from the time of filing plaint till conclusion of the trial. In such circumstances, the plaintiffs are not entitled for amendment of boundaries drastically changing the extent and location of the suit schedule property from that one mentioned in the plaint schedule at the time of filing the suit. In that view of the matter, I find that a grave mistake is committed by the Court below in considering the application for amendment of the boundaries and there is no due diligence on the part of the plaintiffs

in making such an application for amendment of the boundaries of plaint schedule at a belated stage after conclusion of the trial when the suit was posted for arguments.

17. In the result, the Civil Revision Petition is allowed setting aside the impugned order dated 28.08.2015 in IA No.216 of 2015 in O.S.No.664 of 2012 on the file of the learned I Junior Civil Judge, City Civil Court, Secunderabad. Since the original suit is being posted for arguments, the Court below shall dispose of the same, within three months from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs. Miscellaneous applications, if any pending in this revision petition shall stand closed.

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2022 (1) L.S. 116 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Smt.Justice Lalitha Kanneganti

Syed Inayath Ullah ..Petitioner
Vs.
The State of Telangana ..Respondent

CRIMINAL PROCEDURE CODE, Sec.438 - Petition seeking bail to the Petitioner/A.1 in the event of his arrest in connection with Crime, registered for the offences punishable under Sections 406, 420 read with Section 34 IPC.

CRIMINAL PROCEDURE CODE, Sec.41-A - After issuance of notice u/Sec.41-A of Cr.P.C, Police cannot arrest without Magistrate's permission.

HELD: This Court has already directed the Director General of Police to frame guidelines with regard to issuance of acknowledgment in the cases where accused appears before the police under Section 41-A Cr.P.C., and the same cannot be at the whims and fancies of the police - If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in Arnesh Kumar's case, they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail - It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused - Criminal Petition is disposed of, directing the police concerned to follow the procedure as contemplated under Section 41-A Cr.P.C., and the guidelines formulated by the Apex Court in Arnesh Kumar's case.

Mr.Rajender Khanna, Advocate for the Petitioner.
Public Prosecutor for Respondent.

Crl.P.No.824/2022 Date:7-2-2022

O R D E R

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking bail to the petitioner/A.1 in the event of his arrest in connection with Crime No.109 of 2021 of Central Crime Station, WCO Team- V, Hyderabad, registered for the offences punishable under Sections 406, 420 read with Section 34 IPC.

2. The case of prosecution is that the *de facto* complainant lodged a complaint stating that in September, 2020, he came into contact with A1 through his friend Ibrahim and that A1 has introduced himself as Doctor in Virinchi Hospital and running a clinic at Narayanaguda. In January, 2021, A1 has requested the de-facto complainant to provide a sum of Rs. 45,00,000/- and assured to repay the same with good interest on or before 01.03.2021, and on believing his words, he paid an amount of Rs.25,00,000/- on 16.01.2021 and Rs.20,00,000/- on 21.01.2021 by procuring the said amounts from his friends. But, on completion of the said period, A1 and his father/A2 dodged the matter and on several requests, A1 has issued a cheque for a sum of Rs.10,00,000/-, but the same was bounced on its presentation before the Bank, thereby cheated him.

3. Learned Counsel for the petitioner Mr.Rajender Khanna, submits that earlier in Crl.P.No.8721 of 2021 filed by petitioner for pre-arrest bail, this Court has directed the police concerned to follow the procedure under Section 41-A Cr.P.C., and the guidelines formulated by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**(2014) 8 SCC 273. Learned counsel submits that after disposal of the said petition, petitioner was issued notice under Section 41-A Cr.P.C., and he has appeared before the police on two occasions, and whenever he appeared before them, there was no receipt of acknowledgment from the police and he was constrained to sent all the relevant material to the Director General of Police as well as Commissioner of Police. He further submits that in all the cases where notice under Section 41-A Cr.P.C., was issued, the police are not issuing any acknowledgment and some times, they are coming up saying that the accused is not cooperating with the investigation and taking steps to arrest the accused, and hence, the petitioner's case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits the police have issued notice under Section 41-A Cr.P.C., and they are already following the guidelines formulated by the Apex Court in **Arnesh Kumar's** case (supra)**.** He further submits that the police are going to file a report before this Court in another case about the procedure to be adopted.

5. This Court has already directed the Director General of Police to frame guidelines with regard to issuance of acknowledgment in the cases where accused appears before the police under Section 41-A Cr.P.C., and the same cannot be at the whims and fancies of the police. If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in **Arnesh Kumar's** case (supra), they could as well come before this Court by filing contempt petition against the

concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail. It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused.

6. Accordingly, the Criminal Petition is disposed of, directing the police concerned to follow the procedure as contemplated under Section 41-A Cr.P.C., and the guidelines formulated by the Apex Court in Arnesh Kumar's case (supra).

7. Consequently, miscellaneous applications pending, if any, shall stand closed.

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2022 (1) L.S. 118 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Venkateshwara Reddy

T. Saritha & Ors., ..Petitioners
Vs.
Adi Reddy Mohan Reddy & Ors., ..Respondents

CIVIL PROCEDURE CODE, Or.22, Rule 1 and Or.1 & Rule 10 - Proposed parties filed IA in lower Court to implead them as Defendant Nos.3 to 6 in suit was dismissed for default consequential IA under Or.9, Rule 9 of CPC also dismissed - After dismissal of said IAs the proposed party again filed IA under Or.22, Rule 4 CPC to permit them to come on records and same was dismissed for default - Hence this CMA is filed.

CMA No.312/2021 Date:21-1-2022

HELD: The original suit is filed by plaintiff for specific performance of suit agreement of sale and that deceased defendant No.1 is being represented by his widow as defendannt no.2, and that if she is not entitled to represent the estate of deceased defendant no.1, the plaintiff would suffer - In such circmstances in view of dispute relationship of proposed parties with deceased defendant no.1, the plaintiff cannot be compelled to fight against proposed parties - Hence Court did not find any irregularity committed by the Court below - In the result CMA is dismissed.

Mr.M. Radha Krishna, Advocate for the Petitioner.
Mr.P.Giri Krishna, Advocate for the Respondent.

J U D G M E N T

1. This Civil Miscellaneous Appeal is filed aggrieved by the order dated 12.03.2020 in I.A.No.103 of 2020 in I.A.No.161 of 2019 in O.S.No.353 of 2008 on the file of learned IV Additional District and Sessions Judge-cum-I Additional Family Judge, Ranga Reddy District.

For the sake of convenience, the parties are referred to as plaintiff, defendants and proposed parties as arrayed in the original suit and in I.A.No.161 of 2019.

2. The plaintiff has filed the original suit No.353 of 2008 for specific performance of agreement of sale against defendant Nos.1 and 2. During pendency of the suit, defendant No.1 died and as per the orders in I.A.No.141 of 2015, dated 26.10.2017, defendant No.2 i.e. the wife of defendant No.1 was brought on record as his legal representative. Defendant No.1 himself has filed the written statement in the original suit on 04.09.2008, issues were settled and the trial was in progress. At this stage, as the defendant No.1 died, his wife was brought on record as defendant No.2 as per the orders in I.A.No.141 of 2015, dated 26.10.2017. Thereafter, I.A.No.161 of 2019 was filed by the proposed parties under Order 1 Rule 10 r/w. Order 22 Rule 4 CPC to implead them as defendant Nos.3 to 6 in the original suit. That application was dismissed for default on 23.01.2020. Consequently, I.A.No.103 of 2020 is filed under Order 9 Rule 9 r/w. Section 151 CPC to restore I.A.No.161 of 2019 by setting aside the dismissal order dated 23.01.2020 in the interest of justice. This application filed under Order 9 Rule 9 CPC was dismissed through the order impugned on 12.03.2020 by the trial Court with an observation that initially, I.A.No.1320 of 2017 was filed by the petitioners under Order 1 Rule 10 r/w. Order 22 Rule 4 CPC to permit them to come on record being the legal heirs of the deceased defendant No.1 and that application was dismissed by the trial Court after due contest, on 17.08.2018 holding that there is a dispute with regard to relationship between the proposed parties and the deceased defendant No.1 and that they cannot be treated as the legal representatives of deceased/defendant No.1 for the purpose of the original suit as the defendant No.2 is added as his legal representative.

3. After dismissal of I.A.No.1320 of 2017, the petitioners have again filed I.A.No.161 of 2019 under Order 22 Rule 4 CPC to permit them to come on record as defendant Nos.3 to 6 being the legal heirs of deceased defendant No.1 and that petition was dismissed for default on 23.01.2020 since the petitioners failed to prosecute the litigation properly and the costs imposed by the Court were also not paid till 3.40 p.m. on that day. The Court below has made an observation that even prior to that date, docket reveals that petitioners were not evincing any interest to prosecute the case. Further, the order dated 17.08.2018 passed in I.A.No.1320 of 2017 has attained finality since there is no material on record to suggest that the petitioners have preferred any revision or appeal before the superior Court challenging the dismissal orders.

4. The above being the factual position, the petitioners, without disclosing the dismissal of I.A.No.1320 of 2017 on 17.08.2018, have again filed I.A.No.161 of 2019 under Order 22 Rule 4 CPC to implead them in the original suit as legal representatives of deceased defendant No.1.

At the cost of repetition, it is to mention that after the death of defendant No.1, his wife Smt.T.Vijaya Laxmi was brought on record as defendant No.2 as per the orders in I.A.No.141 of 2015, dated 26.10.2017 and amended plaint was also filed. The orders in I.A.No.1320 of 2017, dated 17.08.2018 are available in the material papers filed by the revision petitioners/ proposed parties, which show that the petitioners approached the Court with a request to implead them as legal representatives of deceased defendant No.1 after the defendant No.2 was brought on record as legal representative of defendant No.1, but they failed to file any documentary proof to show that they are the legal heirs of deceased defendant No.1. In view of the fact that there is a dispute as to the relationship of proposed parties with the deceased defendant No.1 and as defendant No.2 is already representing the estate of defendant No.1 in a suit for specific performance, the trial Court held that the proposed parties are not necessary for effective adjudication of the matter in the original suit No.353 of 2008. By suppressing the said fact, I.A.No.161 of 2019 was filed again under Order 22 Rule 4 CPC, which was dismissed for default on 23.01.2020. For restoration of the said application, this I.A.No.103 of 2020 is filed under Order 9 Rule 9 r/w. Section 151 CPC.

5. Learned counsel for appellants relied on the principles laid by the Hon'ble Supreme Court in **Pankajbhai Rameshbhai Zalavadia** v. Jethabhai Kalabhai Zalavadiya (deceased) through Lrs. and others AIR 2018 SC 490 **and in** Varadarajan v. Kanakavalli & others AIR 2020 SC 740**.**

6. I have carefully perused the principles laid in the above decisions. It is true the dismissal of application under Order 22 Rule 4 CPC is not a bar for filing application under Order 1 Rule 10 CPC and the petitioners/third parties are always at liberty to file such applications but the facts of the present case are quite distinct. The petitioners have been claiming their status as legal representatives of deceased defendant No.1, which is in dispute. The widow of defendant No.1 i.e. defendant No.2, is brought on record. The plaintiff and the defendant No.2 have been disputing the relationship of proposed parties with the deceased defendant No.1. The proposed parties also failed to adduce any oral or documentary evidence either in I.A.No.1320 of 2017 or in I.A.No.161 of 2019 to establish their relationship with deceased defendant No.1. It is not a suit for partition filed by the defendant No.1 or any of his heirs where the proposed parties are entitled to agitate for their legal status, if any, as legal representatives of deceased defendant No.1.

7. The original suit is filed by the plaintiff for specific performance of suit agreement of sale and that the deceased defendant No.1 is being represented by his widow as defendant No.2, and that if she is not entitled to represent the estate of deceased defendant No.1 the plaintiff would suffer. In such circumstances in view of disputed relationship of proposed parties

with the deceased defendant No.1, the plaintiff cannot be compelled to fight against the proposed parties. Therefore, I do not find any irregularity committed by the court below. The facts of the present case are distinguishable from the facts in the above cited decisions. The petitioners are not entitled for the benefit of the principles laid in the above decisions.

8. Be it stated that, the suit pertains to the year 2008 and the petitioners/third parties are trying to stall the proceedings by filing one petition after another. Initially, I.A.No.1320 of 2017 was filed and it was dismissed on merits on 17.08.2018 and attained finality as no revision is filed against the said orders. Conveniently, thereafter, I.A.No.161 of 2019 is filed under Order 22 Rule 4 CPC as the earlier petition was filed under Order 1 Rule 10 r/w. Order 22 Rule 4 CPC and after dismissal of this application for default on 23.01.2020, they have filed the present application in I.A.No.103 of 2020 to restore the said application in I.A.No.161 of 2019. In fact, the application in I.A.No.161 of 2019 was dismissed for default, as the petitioners/proposed parties have failed to pay the costs and failed to represent the matter. In such circumstances, the trial Court, after careful analysis of the facts, has rightly dismissed the said application and I find no reason to interfere with the orders impugned.

9. In the result, this civil miscellaneous appeal is dismissed with costs. However, considering the fact that the original suit is filed in the year 2008 and is still pending, the Court below shall make every endeavour for disposal of the original suit within Six months from the date of receipt of the copy of this order. Both the parties to the suit shall co-operate for expeditious disposal of the suit as directed.

Pending miscellaneous applications, if any, shall stand closed.

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2022 (1) L.S. 121 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble The Chief Justice
Satish Chandra Sharma &
The Hon'ble Mr.Justice
Abhinand Kumar Shavili

Mandala Murali ..Petitioner

Vs.

The State of A.P., ..Respondent

INDIAN PENAL CODE,Sec.498-A and 302 - Criminal appeal against the judgment of Sessions Court, whereby the Appellant/Accused was convicted for the offence punishable under Sections 498-A and 302 IPC - Appellant has been sentenced to undergo life imprisonment and to pay a fine of Rs.500/- with a default clause to undergo three months simple imprisonment for the offence punishable under Section 302 IPC, he has also been sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.100/- with a default

clause to undergo simple imprisonment for one month for the offence punishable under Section 498-A IPC

HELD: In the present case, Dying Declaration is the sole basis for convicting the Appellant/Accused - Deceased was in a fit state of mind, the Dying Declaration is true and voluntary as it was recorded by the Magistrate and the Doctor has certified that the deceased was in a fit state of mind at the time of giving statement and therefore there is no reason to discard the Dying Declaration - Trial Court was justified in convicting the Appellant - No reason to set aside the judgment of conviction - Criminal Appeal stands dismissed.

J U D G M E N T

(per the Hon'ble The Chief Justice Satish Chandra Sharma)

1. The present criminal appeal is arising out of a judgment dated 10.01.2011 in S.C.No.282 of 2008 on the file of the learned IV Additional Sessions Judge, Ranga Reddy District, whereby the appellant/accused was convicted for the offence punishable under Sections 498-A and 302 IPC. The appellant/accused has been sentenced to undergo life imprisonment and to pay a fine of Rs.500/- with a default clause to undergo three months simple imprisonment for the offence punishable under Section 302 IPC. He has also been sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.100/- with a default clause to undergo simple imprisonment for one month for the offence punishable under Section 498-A IPC.

2. The prosecution case, in short, is that the marriage of the appellant/accused with the deceased Saritha took place on 08.06.2007 as per Hindu customs and rights. At the time of marriage, the parents of the deceased gave Rs.30,000/-, six tulas of gold ornaments and household articles towards dowry and also promised to pay a sum of Rs.20,000/- after some time. The appellant/accused was working as an auto rickshaw driver and on 30.12.2007, he came back to his house and while his wife was in the bathroom, he poured kerosene upon her and lit fire with an intention to kill her. She came running out of the house and P.W.3 – Mandala Anjamma, P.W.4 – Borra Janardhan, and P.W.5 – Mandala Jangaiah, came out from their houses and extinguished the flames. The deceased was taken to Osmania General Hospital and she expired on 02.01.2008 at about 8.30 pm. A crime was registered as FIR No.172 of 2007 dated 31.12.2007. The police, after investigating the crime, filed a charge sheet for the offence under Sections 498-A and 302 IPC and the learned Magistrate took cognizance in PRC No.17 of 2008. Thereafter, the matter was committed for trial and the appellant/accused pleaded not guilty.

3. The prosecution has examined as many as 16 witnesses besides marking 17 documents i.e., Exs.P1 to P17 and two material objects i.e., M.O.1 and M.O.2.

Before the trial Court, P.W.1 – Kondey Kamalamma, the mother of the deceased, stated that the deceased was her fourth daughter and the marriage of the deceased took place about two and half

years back, the deceased and the appellant/ accused were living happily and the deceased died because of burn injuries. P.W.1 - Kondey Kamalamma, has not supported the prosecution. P.W.2 – Kondey Swamy, the father of the deceased, also stated on the same lines and has not supported the prosecution. P.W.3 – Mandala Anjamma, and P.W.4 – Borra Janardhan, who are neighbours of the appellant/accused have stated that they took the deceased to Osmania General Hospital for treatment and again they also did not support the prosecution story and they turned hostile.

P.W.5 – Mandala Jangaiah and P.W.6 – Bungani Jangaiah, who were circumstantial witnesses to the incident, also did not support the case of the prosecution. P.W.7 – Aluvula Narsimha, and P.W.8 – Pilli Balraj, who were present at the time of preparation of scene observation report (Ex.P.7), rough sketch (Ex.P.8) and seizure of empty kerosene tin of 5 litre capacity (M.O.1) and burnt cloth piece of the deceased (M.O.2), have identified their signatures on Exs.P.7 and P.8.

P.W.9 – Mogila Pushpa, who was present at the time of conducting inquest over the dead body of the deceased, opined that the deceased died due to burn injuries. P.W.11 – Mohd.Ashfaq Ali, the Incharge Tahsildar of Maheswaram Mandal, has stated before the trial Court that on 03.01.2008 he conducted inquest over the dead body of the deceased on the requisition of the police in the presence of P.W.9. P.W.10

– Alwala Prabhakar, panch witness in whose presence the appellant/accused has made a confessional statement, did not support the case of the prosecution. P.W.12 – Dr. Ravinder Goud, has conducted the autopsy over the dead body and he has opined that the deceased died on account of burns.

4. The statements of P.W.12 and P.W.10 and Exs.P.10 and P.11 make it very clear that the deceased sustained burn injuries in the house of the appellant/ accused on 30.12.2007 and during the night she was shifted to Osmania General Hospital and she died on 02.01.2008 at about 8.30 pm while undergoing treatment on account of burn injuries.

5. In the present case, as most of the witnesses have turned hostile, the conviction is based upon the Dying Declaration of the deceased. The Dying Declaration is on record. In the instant case, P.W.16 – D.Venkataramana, the Magistrate who has recorded the Dying Declaration of the deceased in Osmania General Hospital, has stated before the trial Court that a requisition (Ex.P.16) dated 31.12.2007 was made by the Station House Officer of Maheswaram Police Station through the Head Constable 574 – Ibrahim, with an endorsement by the doctor of Osmania General Hospital to record the Dying Declaration of the deceased. He received the requisition at about 8.15 pm and immediately rushed to the hospital and reached there by 9.00 pm. The duty doctor certified the condition of the patient who was conscious and in a fit state of mind to give the Dying Declaration. The duty doctor has given a certificate to that effect and thereafter, the Dying Declaration was recorded verbatim. The Dying Declaration, which is on record, as Ex.P.17 was read over and the contents were again told to

the deceased and by 9.15 pm the entire formality was over. The certificate of the doctor is also on record and it makes it very clear that the patient was conscious, coherent and in a fit state of mind at the time of when the Dying Declaration was recorded. The doctor has also made an endorsement that he was present at the time when the Dying Declaration was recorded.

6. The deceased, in the Dying Declaration, has categorically stated that when she went into the bathroom, her husband followed her and poured kerosene on her body and lit fire due to which she sustained burn injuries. She has also stated that her husband used to harass her mentally and physically and he used to demand additional dowry.

7. Much has been argued by learned counsel for the appellant/accused before this Court over the Dying Declaration and it has been argued that conviction cannot be based upon the Dying Declaration alone. It has been stated that the parents of the deceased have given a clean chit to the appellant/accused and once there was no complaint from the parents of the deceased in respect of demand of additional dowry, the solitary piece of evidence, which is the Dying Declaration, could not have been looked into and could not have been made the basis for convicting the appellant/ accused.

8. This Court has carefully taken into account the arguments canvassed by the learned counsel for the parties. Reliance has been placed upon the judgments delivered in the case of **Rasheed Beg v. State of Madhya Pradesh** AIR 1974 SC 332 and **Atbir v. Govt. of NCT Delhi**(2010) 9 SCC 1.

9. In the case of **Rasheed Beg** (supra), two Dying Declarations were recorded and there was improvement in the subsequent Dying Declaration which was recorded by the doctor and as there was improvement in the subsequent Dying Declaration and certain discrepancies in both the Dying Declarations, the benefit was given to the accused therein.

10. It has been argued that the Court should be very careful and cautious in convicting a person solely on the basis of Dying Declaration and there cannot be any absolute law that the Dying Declaration can be the sole basis of conviction, unless it is corroborated.

11. In the present case, the undisputed facts also make it very clear that the deceased died within six months after the marriage. It is true that the parents of the deceased have not made allegation about demand of dowry. However, the fact remains that the deceased at her death bed with burn injuries and who was in a fit state of mind has categorically stated that her husband has poured kerosene over her and lit fire with a intention to kill her. There is no reason as to why this Court should disbelieve the statement of a young lady who was in senses while giving the Dying Declaration, that too before a Magistrate.

12. The Hon'ble Supreme Court in the case of **Poonam Bai v. Chhattisgarh**(2019) 6 SCC 145 has summarised the principles relating to Dying Declaration especially when it is the sole basis for conviction. Paragraph 10 of the aforesaid Judgment is

reproduced as under:-

> "10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his Maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires full confidence of the court. In the matter on hand, since Ext. P-2, the dying declaration is the only circumstance relied upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the well-established principles regarding the acceptability of dying declarations."

Keeping in view the aforesaid Judgment, as in the present case the Dying Declaration is truthful, trustworthy, voluntary, blemishless and reliable, the question of discarding the same does not arise.

13. The Hon'ble Supreme Court in the case of **Madan @ Madhu Patekar v. State of Maharashtra**(2019) 13 SCC 464 has dealt with the issue of Dying Declaration and has held that it can be the sole basis of conviction. Paragraphs 10, 11 and 12 of the aforesaid Judgment read as under:-

> "10. The rule of admissibility of dying declaration is no more res integra. In the adjudication of a criminal case, dying declaration plays a crucial role. A dying declaration made by a person as to cause of his/her death or as to any of the circumstances which resulted in his/her death, in cases in which cause of death comes in question, is relevant under Section 32 of the Evidence Act. It has been emphasised number of times that dying declaration is an exception to the rule against admissibility of hearsay evidence. The whole development of the notion that the dying declaration, as an exception to the hearsay rule, is based on the formalistic view that the determination of certain classes of evidence as admissible or inadmissible and not on the apparent credibility of particular evidence tendered.

11. We are aware of the fact that the physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations

are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence. In order to ameliorate such concerns, this Court has cautioned in umpteen number of cases to have a cautious approach when considering a conviction solely based on dying declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [see: *Ram Bihari Yadav* v. *State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085 and *Suresh Chandra Jana* v. *State of W.B.* (2017) 16 SCC 466 : (2018) 2 SCC (Cri) 187].

12. Moreover, this Court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and genuineness, it should not be acted upon without corroborative evidence [see also: *Atbir* v. *Govt. (NCT of Delhi)* , (2010) 9 SCC 1:(2010) 3 SCC (Cri) 1110, *Paniben* v. *State of Gujarat* (1992) 2 SCC 474 : 1992 SCC (Cri) 403 and *Panneerselvam* v. *State of T.N.*, (2008) 17 SCC 190 : (2010) 4 SCC (Cri) 496]."

In the light of the aforesaid Judgment, keeping in view the fact that the Dying Declaration was recorded by the learned Magistrate, the deceased has named the accused as culprit, the deceased at the time of recording the Dying Declaration was in full senses, there is no reason to disbelieve the Dying Declaration.

14. In the case of **State of Rajasthan v. Ganwara**(2019) 13 SCC 687, the Hon'ble Supreme Court has again dealt with the issue of Dying Declaration, which was the sole basis for conviction. Paragraph 8 of the aforesaid Judgment is reproduced as under:-

> "8. It is well settled and needs no reiteration at our hands that dying declaration can form the sole basis for conviction. At the same time, it is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. The settled legal principle is that dying declaration should be free from slightest of doubt and shall be of such nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court must exercise great caution while considering the weight to be given to a dying declaration, particularly when there are more than one dying declaration."

In the light of the aforesaid Judgment and after careful consideration of the Dying Declaration, this Court is of the opinion that the trial Court has rightly convicted the appellant/accused.

15. The Hon'ble Supreme Court in similar circumstances, in the case of **Vijay Mohan Singh v. State of Karnataka**(2019)

5 SCC 436 has held the person guilty for an offence under Sections 302 and 498-A IPC solely based upon the Dying Declaration.

16. In the case of **Atbir** (supra), the Hon'ble Supreme Court in paragraphs 14 to 22 has held as under:-

"**(A) Dying declaration**

> 14. It is true that in the case on hand, conviction under Section 302 was based solely on the dying declaration made by Sonu @ Savita and recorded by the investigating officer in the presence of a doctor. Since we have already narrated the case of the prosecution which led to three deaths, eliminating the second wife and the children of one Jaswant Singh, there is no need to traverse the same once again. This Court in a series of decisions enumerated and analysed that while recording the dying declaration, factors such as mental condition of the maker, alertness of mind and memory, evidentiary value, etc. have to be taken into account.

15. In *Munnu Raja* v. *State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376] this Court held: (SCC pp. 106-07, para 6)

> "*6*. … It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross- examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated…."

It is true that in the same decision, it was held, since the investigating officers are naturally interested in the success of the investigation, the practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to have been encouraged.

16. In *Paras Yadav* v. *State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] this Court held that lapse on the part of the investigating officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. This Court further held that a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceasedwas conscious and was in a fit state of health to make the statement.

17. The effect of the dying declaration not recorded by the Magistrate was considered and reiterated in *Balbir Singh* v. *State of Punjab* [(2006) 12 SCC 283 : (2007) 1 SCC (Cri) 715] . Para 23 of the said judgment is relevant which reads as under: (SCC p. 289)

> "*23*. However, in *State of Karnataka* v. *Shariff* [(2003) 2 SCC 473 : 2003 SCC (Cri) 561] , this Court categorically held that there was no requirement of law that a dying declaration must necessarily be

made before a Magistrate. This Court therein noted its earlier decision in *Ram Bihari Yadav* v. *State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] wherein it was also held that the dying declaration need not be in the form of questions and answers. (See also *Laxman* v. *State of Maharashtra* [(2002) 6 SCC 710 : 2002 SCC (Cri) 1491] .)" It is clear that merely because the dying declaration was not recorded by the Magistrate, by itself cannot be a ground to reject the whole prosecution case. It also clarified that where the declaration is wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. This Court further held that the statement of the injured, in the event of her death may also be treated as FIR.

18. In *State of Rajasthan* v. *Wakteng* [(2007) 14 SCC 550 : (2009) 3 SCC (Cri)217] the view in *Balbir Singh case* [(2006) 12 SCC 283 : (2007) 1 SCC (Cri) 715] has been reiterated. The following conclusions are relevant which read as under: (*Wakteng case* [(2007) 14 SCC 550 : (2009) 3 SCC (Cri) 217] , SCC p. 554, paras 14-15)

> "*14*. Though conviction can be based solely on the dying declaration, without any corroboration the same should not be suffering from any infirmity.
>
> *15.* While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction."

19. In *Bijoy Das* v. *State of W.B.* [(2008) 4 SCC 511 : (2008) 2 SCC (Cri) 449] this Court after quoting various earlier decisions, reiterated the same position.

20. In *Muthu Kutty* v. *State* [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] the following discussion and the ultimate conclusion are relevant which read as under: (SCC p. 120, paras 14-15)

> "*14*. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-

examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

21. The same view has been reiterated by a three-Judge Bench decision of this Court in *Panneerselvam* v. *State of T.N.* [(2008) 17 SCC 190 : (2010) 4 SCC (Cri) 496] and also the principles governing the dying declaration as summed up in *Paniben* v. *State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403] .

22. The analysis of the above decisions clearly shows that:

(i)Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii)The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and

that it was not the result of tutoring, prompting or imagination.

(iii)Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv)It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v)Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii)Even if it is a brief statement, it is not to be discarded.

(ix)When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x)If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

In the aforesaid Judgment, after analysing the earlier Judgments, the Hon'ble Supreme Court has arrived at a conclusion that the Dying Declaration can be the sole basis of conviction if it inspires the full confidence of the Court and the deceased should be in a fit state of mind at the time of making the statement.

17. In the present case, the Dying Declaration is the sole basis for convicting the appellant/accused. The deceased was in a fit state of mind, the Dying Declaration is true and voluntary as it was recorded by the learned Magistrate and the Doctor has certified that the deceased was in a fit state of mind at the time of giving statement and therefore there is no reason to discard the Dying Declaration.

18. This Court, keeping in view the Judgment delivered in the case of **Atbir** (supra) and keeping in view the peculiar facts and circumstances of the case is of the opinion that the Dying Declaration, which is in existence is a material piece of evidence and can certainly be the sole basis of convicting the appellant/accused.

19. In the considered opinion of this Court, the trial Court was justified in convicting the appellant/accused. This Court does not find any reason to set aside the judgment of conviction and in the peculiar facts and circumstances of the case, the Criminal Appeal is dismissed.

The miscellaneous applications pending, if any, shall stand closed.

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2022 (1) L.S. 23 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
B.R. Gavi &
The Hon'ble Mr.Justice
Krishna Murari

Babu Venkatesh & Ors., ..Petitioners

Vs.

State of Karnataka & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Secs.156(3) and 482 - Appeals challenging judgments and orders, passed by the High Court, thereby dismissing the criminal petitions filed by the present appellants under Section 482 of the Code of Criminal Procedure - Complaint under Section 156(3) CrPC filed after a period of one and half years from the date of filing of written statement - Complainants are defendants in civil suits with regard to the same transactions.

HELD: When the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C - With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. - Ulterior motive of harassing the accused - Continuation of the present proceedings would amount to nothing but an abuse of process of law - Appeals stand allowed and the judgments of the High Court set aside, consequently FIR's stand quashed.

J U D G M E N T
(per the Hon'ble Mr.Justice
B.R. Gavai)

Leave granted.

2. The present appeals challenge the four judgments and orders dated 22nd January 2021, passed by the High Court of Karnataka at Bengaluru, thereby dismissing the criminal petitions filed by the present appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.).

3. The facts in brief giving rise to the present appeals, taken from the appeal arising out of Special Leave Petition (Crl.) No. 2183 of 2021, are as under:

4. The appellant Nos. 2 and 3 on one hand and respondent No. 2 on the other hand, entered into various Agreements for Sale with respect to properties situated at Bangalore. According to the appellants, the amounts as mentioned in the agreements, were paid by them as consideration by three cheques, one of them drawn from the account of appellant No. 1, another one from account of M/s. S.S.R. V Trans Solutions and other one from the account of M/s. Shobha Tours and Travels, which are operated by appellant No. 1. All these three cheques were bearer cheques.

It is the case of appellants that, all the cheques were encashed by the respondent No. 2.

5. It is the case of the appellants that, after receipt of the payments, the respondent No. 2 was avoiding to get the Sale-deed registered. As such, the appellant Nos. 2 and 3 on 24th November, 2017 had filed four different suits being O.S. No. 8020/2017, 8018/2017, 1616/2017 and 1614/2017, before the Courts of Principal Senior Civil Judge and Principal City Civil Judge at Bangalore, for specific performance of contract. The respondent No. 2, who is the defendant No. 1 in O.S. No. 8020/2017, filed his written statement on 09th April 2018.

6. The respondent No. 2, thereafter filed a complaint dated 10th September 2019, with Tilak Nagar Police Station, Jayanagar, Bengaluru, against the appellants, thereby making allegations of cheating. Thereafter, following a gap of almost one year, the respondent No. 2 filed Private Complaint being P.C.R. No. 12445/2019 on 18th September 2019, before the Court of II Additional Chief Metropolitan Magistrate, Bangalore.

7. On the same day, the respondent No. 2, along with his wife who is the respondent No. 3 in the rest of the appeals arising out of Special Leave Petition (Crl.) Nos. 2182/2021, 2162/2021, and 2217/2021, filed three other Private Complaints being P.C.R. Nos. 12441/2019, 12443/2019 and 12444/2019 before the same court.

8. The allegations in the complaints are basically that the appellant No. 1, who is the son of appellant Nos. 2 and 3, had obtained blank stamp papers from the respondents and created Agreements for Sale by misusing the said blank stamp papers. As such, it is case of the respondents that, the appellants committed forgery and cheated them, and as such they are liable for punishment for offences punishable under Sections 420, 464, 465, 468 and 120-B of the Indian Penal Code (hereinafter referred to as the IPC).

9. The II Additional Chief Metropolitan Magistrate, at Bangalore on 6th December 2019, passed the order as under:

"The Complainant has filed the present private complaint under section 200 of CrP.C., against the accused Nos. 1 to 3 for the alleged offences punishable under section 420,465,468,464 and 120-B of IPC. In the complaint, the complainant has made serious allegations against the accused persons. Therefore, it appears this court that, it is just and proper to refer the matter to the jurisdiction police for investigate and submit report. Accordingly, the matter is referred to PSI of Jayanagar Police Station under section 156 (3) of CrP.C., for investigation and submit report by 26.02.2020."

10. On the basis of the same, a First Information Report (hereinafter referred to as FIR) No. 258/2019 came to be registered at Jayanagar Police Station Bengaluru City on 18th December 2019, for the offences punishable under Sections 120-B, 420, 471, 468, 465, of the IPC. Three similar FIRs came to registered against the appellants

on different dates in December 2019.11. The appellants thereafter filed petitions under Section 482 of the Cr.P.C. before the High Court of Karnataka at Bengaluru, being Criminal Petition Nos. 6719/2020, 6733/2020, 6729/2020 and 6737/2020. The main contention of the appellants in the criminal petitions was that, the order under Section 156 (3) of the Cr.P.C. was passed in a mechanical manner by the II Additional Chief Metropolitan Magistrate, at Bangalore.

12. It was submitted that, the Magistrate was required to apply his mind before passing an order under Section 156 (3) of the Cr.P.C. It was further submitted that, unless an application under Section 156 (3) of the Cr.P.C. was supported by an affidavit duly sworn by the complainant, the learned Magistrate could not have passed an order under the said provision.

13. It was further submitted that, the dispute was purely civil in nature and the criminal complaint was filed by the respondents only to harass the appellants. The Single Judge of the High Court vide four identical impugned orders dated 22nd January 2021, dismissed the petitions on the ground that, serious allegations of cheating and forgery were shown in the complaint and as such no case was made out for quashing the FIRs.

14. We have heard Shri Abdul Azeem Kalebudde, learned counsel appearing on behalf of the appellants and Shri Shubhranshu Padhi, learned counsel appearing on behalf of the State. In spite of being duly served, none appeared for respondent No. 2.

15. It is not in dispute that, apart from O.S. No. 8020/2017, the appellant Nos. 2 and 3 have filed suits being O.S. No. 1614/2017, O.S. No. 1616/2017 and O.S. No. 8018/2017, seeking specific performance of contract with regard to the Agreements for Sale between the appellant Nos. 2 and 3 on one hand and respondent No. 2 on the other hand. The said suits were filed on 24th November 2017.

16. It is also not in dispute that, written statements have been filed by the respondent No. 2 in all the said suits, between the period from 9th April 2018 to 1st August 2018. It is the defense of the respondent No. 2 that, the appellant No. 1 who is the son of appellant No. 2 and 3, is a money lender and he lends money at a high rate of interest. It is the further defense of respondent No. 2 that, when the respondents approached the appellant No. 1 for financial help, he used to take respondents' signatures on the blank paper and also collected cheques signed by the respondent No. 2 as security for said loan.

17. It is the further contention of respondent No. 2 that he had discharged the debt of the appellant No. 1 by paying an amount of Rs. 56,50,000/- (Rupees Fifty-Six Lakh and Fifty Thousand only) by way of RTGS to the account of appellant No. 1. The execution of Agreements for Sale was specifically denied by the respondent No. 2.

18. After filing of the written statement on 09th April 2018 in O.S. No. 8020/2017, respondent No. 2 on 10th September 2019 filed a complaint before police station

Jayanagar, stating therein that, the appellant No. 1 had created forged documents with regard to the properties belonging to the respondent No. 2 and his wife. He has stated in the said complaint that he has not signed the documents and that the appellants were taking advantage of the blank cheques and blank stamp papers. Thereafter on 18th September 2019, respondent No. 2 filed a Private Complaint being P.C.R. 12445/2019. He along with his wife filed three other Private Complaints being P.C.R. Nos. 12441/2019, 12443/2019 and 12444/2019 before the Court of II Additional Chief Metropolitan Magistrate, Bangalore, out of which the present proceedings arise.

19. It could thus be clearly seen that, the said complaint dated 10th September 2019, was filed almost after a period of two years from the date of institution of suits by the appellant Nos. 2 and 3, and almost after a period of one and a half year from the date on which written statement was filed by respondent No. 2.20. It will be relevant to refer to the following observations of this court in the case of State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335, which read thus.

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the

Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

21. It could thus be seen that, though this court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

22. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under Section 156 (3) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of State of Haryana v. Bhajan Lal (supra).

23. Further we find that, the present appeals deserve to be allowed on another ground.

24. After analyzing the law as to how the power under Section 156 (3) of Cr.P.C. has to be exercised, this court in the case of Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287 has observed thus:

"30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify

the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

25. This court has clearly held that, a stage has come where applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156 (3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

28. In the present case, we find that the learned Magistrate while passing the order under Section 156 (3) of the Cr.P.C., has totally failed to consider the law laid down by this court.

29. From the perusal of the complaint it can be seen that, the complainant/ respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C. The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of Priyanka Srivastava v. State of U.P. (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint.

30. We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.

31. We therefore, allow these appeals and set-aside the judgments and orders of the High Court dated 22nd January 2021, passed in Criminal Petition Nos. 6719/2020, 6729/2020, 6733/2020 and 6737/2020. Consequently, the FIR Nos. 255/2019, 256/ 2019 filed on 16th December, 2019, FIR No. 257/2019 filed on 17th December, 2019 and FIR No. 258/2019 filed on 18th December, 2019 registered with Jayanagar Police Station, Bengaluru City are quashed and set aside. Pending application(s), if any, shall stand disposed of.

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2022 (1) L.S. 29 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
S.Abdul Nazeer
The Hon'ble Mr.Justice
Krishna Murari

Kahkashan Kausar
@ Sonam & Ors., ..Petitioners
Vs.
State of Bihar & Ors., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 - Appeal against the judgment passed by the High Court in Criminal Writ Petition, filed by the Appellants under Section 482 of the Code of Criminal Procedure challenging the FIR implicating the Appellants for offences under Sections 341, 323, 379, 354, 498A read with Section 34 of the Indian Penal Code.

HELD: False implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law - In the absence of any specific role attributed to the Accused/ Appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial - General and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial -

Crl.A.No. 195/2022 Date:8-2-2022

Criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged - Impugned order passed by the High Court stands set aside - Impugned F.I.R. against the Appellants stands quashed - Appeal stands allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice Krishna Murari)

Leave granted.

2. This appeal is directed against the judgment and order dated 13.11.2019 passed by the High Court of Patna in Criminal Writ Petition No. 1492 of 2019, filed by the Appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the FIR No. 248/ 2019 dated 01.04.2019 implicating the Appellants for offences under Sections 341, 323, 379, 354, 498A read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC'). The High Court vide order impugned herein dismissed the same.

Factual Matrix

3. The Complainant (Respondent No. 5 herein) Tarannum Akhtar @ Soni, was married to Md. Ikram on 18.09.17. The appellants herein are the in-laws of Respondent No. 5. On 11.12.17, the said Respondent initially instituted a criminal complaint against her husband and the appellants before the Court of Chief Judicial Magistrate, Purnea alleging demand for dowry and harassment. Thereafter, when the file was put up before the Sub Divisional Judicial Magistrate Court, Purnea, for passing order at the stage of issuance of summon, the Ld. Magistrate concluded that upon perusal of material evidence no prima-facie case was made against the in-laws and that the allegations levelled against them were not specific in nature. The said court, however, took cognizance for the offence under section 498A, 323 IPC against the husband Md. Ikram, and issued summons. This dispute was eventually resolved and Respondent No. 5 herein came back to the matrimonial home.

4. Subsequently, on 01.04.19, Respondent No. 5 herein, gave another written complaint for registration of FIR under sections 341, 323, 379, 354, 498A read with Section 34 IPC against her husband Md. Ikram and the appellants herein. The complaint inter-alia alleged that all the accused were pressurizing the Respondent wife herein to purchase a car as dowry, and threatened to forcibly terminate her pregnancy if the demands were not met.

5. Aggrieved, the Husband and appellant herein filed a criminal writ petition before the Patna High Court, for quashing of the said FIR dated 01.04.19, which was dismissed vide impugned judgment. The High Court observed that the averments made in the FIR prima-facie disclosed commission of an offence and therefore the matter was required to be investigated by the police. The Appellants herein, being the niece (Respondent No. 1), Mother in-law (Respondent No. 2), Sister in-law

(Respondent No. 3), and brother in law (Respondent No. 4) have thereby approached this court by way of the present Special Leave Petition.

Contentions made by the Appellants

6. The counsel for the Appellants herein contends, that the Police Officer was duty bound to conduct a preliminary inquiry before registering the FIR as this instant case falls within the categories of cases on which a preliminary enquiry may be made, as mandated by this court in Lalita Kumari Vs. Government of U.P. & Ors. ((2014) 2 SCC 1).

7. It is also submitted that previously in the year 2017, the Respondent wife had instituted a criminal complaint on similar allegations, whereby the Ld. Judicial Magistrate after considering the evidence issued summons only against the husband, and found that the allegations made against the appellants herein were omnibus in nature. Further, it is submitted that the FIR in question has been made with a revengeful intent, merely to harass the Appellant in-laws herein, and should be dealt with accordingly. Reliance is placed on Social Action Forum for Manav Adhikar & Anr. Vs. Union of India, Ministry of Law And Justice & Ors. ((2018) 10 SCC 443), wherein it was observed:-

"4. Regarding the constitutionality of Section 498-A IPC, in Sushil Kumar Sharma v. Union of India and others, it was held by the Supreme Court:-

"Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate a legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work."

Contention made by Respondent No. 1 – State of Bihar

8. Respondent No. 1 herein i.e., the State of Bihar, contends that the present FIR pertains to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife for dowry, and treat her properly. However, the husband and appellants, despite the assurances, have continued their demand for dowry and threatened with forcefully terminating the

Respondent wife's pregnancy. These acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.17. Moreover, an investigation was carried out pursuant to the FIR and the case has been found true against all accused persons, therefore Lalita Kumari (Supra) will not apply in the present case.

Contentions made by Respondent No 5 – Complainant Wife

9. Respondent No. 5 contends that of the total seven accused, the FIR in question was challenged by only five accused including her husband. It is argued that the impugned order is evidently accepted by the accused husband Md. Ikram @Sikandar as he has not challenged the impugned High Court judgment. Further, as far as involvement of the four accused Appellant in-laws is concerned, it is not only reflected from the averments made in the FIR, but also corroborated from the oral and documentary evidence collected by the investigating officer during investigation, culminating into filing of charge-sheet against all seven accused including the four Appellants herein. The allegations thus made in the FIR are sufficient to make out a prima facie case, and non-mentioning of pendency of Complaint case of year 2017, at the time of filing the complaint 01.04.19 is not fatal for the case of the prosecution.

10. It is further submitted that the allegations made in the FIR are serious in nature and the Respondent wife has been repeatedly tortured physically and mentally in order to fulfil the demand for dowry. Further, even if the contentions made by the Respondent No. 5 herein are disputed, by the Appellant in-laws, their veracity can be tested in trial before the Trial Court. It is further contended that this court has also taken a consistent view with regard to exercise of power under S. 482 Cr.P.C., in Rajesh Bajaj Vs. State of NCT of Delhi & Ors. ((1999) 3 SCC 259), wherein it has been clearly held that even if a prima facie case is made out disclosing the ingredients of an offence, Court should not quash the complaint. Therefore, the impugned order can in no way be termed as perverse, cryptic or erroneous and therefore warrant no interference by this Hon'ble Court.

Issue Involved

11. Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed?

12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there

is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in Rajesh Sharma and Ors. Vs. State of U.P. & Anr. ((2018) 10 SCC 472), has observed:-

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

14. Previously, in the landmark judgment of this court in Arnesh Kumar Vs. State of Bihar and Anr. ((2014) 8 SCC 273), it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

15. Further in Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. ((2010) 7 SCC 667), it has also been observed:-

"32. It is a matter of common experience that most of these complaints under section 498A 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.

33. The learned members of the Bar have enormous social responsibility and

obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. 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 harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. 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."

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr. ((2012) 10 SCC 741), it was observed:-

"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times.

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

17. Recently, in K. Subba Rao v. The State of Telangana ((2018) 14 SCC 452), it was also observed that:-

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

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

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general

and omnibus, do not warrant prosecution.

20. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR. Respondent No. 1 i.e., the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.17.

21. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the Respondent wife. Allowing prosecution in the absence of clear allegations against the in-laws Appellants would simply result in an abuse of the process of law.

22. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.

23. In view of the above facts and discussions, the impugned order dated 13.11.2019 passed by the High Court of Patna is set aside. The impugned F.I.R. No. 248 of 2019 against the Appellants under Sections 341, 323, 379, 354, 498A read with Section 34 IPC stands quashed.

24. As a result, appeal stands allowed.

–X–

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