
Afjal Khan and Others Vs State of U.P. and Another

Criminal Misc. Application No. 19085 of 2009

Court: Allahabad High Court

Date of Decision: Jan. 19, 2012

Acts Referred:

Constitution of India, 1950 " Article 226#Criminal Procedure Code, 1973 (CrPC) " Section 125, 155(2), 156(1), 156(3), 200#Dowry Prohibition Act, 1961 " Section 4#Drugs and Cosmetics Act, 1940 " Section 18, 27#Essential Commodities Act, 1955 " Section 3, 7#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) " Section 21, 22#Penal Code, 1860 (IPC) " Section 274, 275, 363, 366, 406#Prevention of Damage to Public Property Act, 1984 " Section 3, 5

Citation: (2012) ACR 1453 : (2012) 3 ADJ 324

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Vinod Prasad, J.

A family, father Irfan Khan (A-2), his wife Smt. Hazara Khatoon (A-3) and their sons Afjal Khan (A-1),

Amzad Khan (A-4), Ajhar Khan (A-5), Athar Khan (A-6), and their daughter Ambiya Khatoon (A-7) and her husband Shaukat (A-8) have

invoked inherent jurisdiction of this Court, u/s 482 Cr.P.C., praying to quash proceedings of their trial in Criminal Complaint Case No. 1076 of

2009, for offences u/s 498-A, 504, 506 I.P.C. and 3/4 D.P. Act pending before Additional Chief Judicial Magistrate, Ghazipur and their

summoning order dated 2.7.2009 passed thereunder. Complainant respondent wife Shabnam Bano (R-2) was noticed and she has filed a counter-

affidavit to which a rejoinder-affidavit has also been filed. A supplementary counter-affidavit has also been filed on her behalf today in the Court

which is also taken on record.

2. I have heard Sri Anil Srivastava, learned counsel for the applicants and Sri Ashish Kumar Srivastava and Sri Ajay Kumar Yadav representing

complainant-respondent No. 2 and Sri Sangam Lal Kesharwani, learned A.G.A. for respondent-State.

Before delving upon rival submissions, back ground facts, which has germinated filing of present Application, are narrated briefly, herein below.

A complaint, Annexure-3, was filed by (R-2) against the applicants before Additional Chief Judicial Magistrate, Ghazipur on 23.3.2009, as

Complaint Case No. 1076 of 2009, under Sections 498-A, 504, 506 I.P.C. and 3/4 D.P. Act, alleging thereunder that she had contracted

marriage with Afzal Khan (A-1) on 25.5.2008 according to Islamic customs. In the marriage, her parents had given sufficient dowry including

ornaments, clothes, utensils, furniture, fridge, colour T.V., cooler, motorcycle etc. alongwith cash amount of Rs. 40,000/- (R-2) went to her in-

laws house and stayed there for two days and then returned back to her parental home where she stayed for another two/three days and then

again returned back to her in-laws house. All the applicants resided in a joint family so much so that (A-7), though married, was also residing with

them with her husband Shaukat (A-8).

3. While (R-2) was residing with her in-laws, the applicants raised a further demand of Rs. one lac as dowry because her father was employed in

electricity department and for that end started torturing (R-2) by rebuking her with slanders. Albeit, (R-2) tolerated her torture, but informed her

father, whenever he phoned her. Twenty days thereafter, complainant's parents came to in-laws house alongwith their younger daughter Ishrat

Bano and tried to pacify (A-1), (A-2) and (A-3) not to torture their daughter and make additional demand of money because they had already

spent sufficient amount in the marriage and were not in a position to pay further amount. While returning back, parents left Ishrat Bano, in in-laws

house, with complainant respondent No. 2. Some fifteen or twenty days, after Ishrat Bano returned back to her parents alongwith Amzad Khan

(A-4). In spite of requests made by the parents, demand of additional dowry by the applicants escalated and husband (A-1), who was employed

in C.R.P.F. threatened (R-2) with polygamy. A month after the marriage, husband (A-1) returned back to his duties but continue to persist his

dowry demand from there also. In absence of her husband, (R-2) was tortured by rest of the applicants for fulfilling dowry demand and she was

even assaulted for it. Shaukat (A-8) used to abet her torture. In August, 2008 complainant's parents alongwith Guddan, Mohd. Umar, Ashraf,

Irshad, Kureshi Khan and others came to applicants' house and tried to mollify applicants and persuade them to desist from making dowry

demand. A fortnight thereafter, (R-2) was turned out of her in-laws house after snatching away her stridhan and since then she was residing with

her parents. Her brother-in-law Amzad Khan (A-4) had also enticed away her younger sister Ishrat Bano on 17.9.2008 at 1.30 p.m. for which

enticement, under an order passed u/s 156(3) Cr.P.C., First Information Report of case crime No. 2474 of 2008, under Sections 363 and 366

I.P.C. was registered at P.S. Kotwali, District Ghazipur against (A-4) and others, in which crime after due investigation, the accused was charge-

sheeted. (A-1) and (A-2) informed (R-2) and her father that if the case against (A-4) is not withdrawn, they will not induct (R-2) in their family.

On 23.11.2008, father of (R-2) was physically assaulted regarding which another case was lodged by him in the Court which was pending. (R-2)

did not take any action against applicants till such time under the hope that the applicants will have remorse one day and will reconcile. However,

since all her efforts failed, (R-2) filed aforementioned complaint, Annexure-3, in the Court under Sections 498A, 504, 506 I.P.C. and 3/4 D.P.

Act seeking justice for her so that malefactors are punished.

4. Following the complaint case procedure, learned Additional Chief Judicial Magistrate recorded the statements of (R-2) and her witnesses

namely Guddan and Noore Alam under Sections 200 and 202 Cr.P.C. vide Annexure-4 to this Application.

Perusing those statements and other material on record, vide impugned order dated 2.7.2009, learned Magistrate summoned the applicants to

stand trial for the offence under Sections 498A, 504, 506 I.P.C. and 3/4 D.P. Act and fixed 31.7.2009 for their appearance. Hence, this

Application, by the applicants, u/s 482 Cr.P.C., for quashing of the entire proceedings of the trial Court.

5. I have heard learned counsel for the applicants and learned A.G.A. for the State and Ashish Kumar Srivastava and Sri Ajay kumar Yadav,

learned counsel for the complainant and have perused the affidavits filed by respective sides.

Before embarking upon rival submissions, a quick searching light on some of the precedents dealing with quashing of trial of an accused at it's very

inception indicates that a prosecution instituted against accused can be quashed, in exercise of powers u/s 482 Cr.P.C., only when (i) the record of

the case does not disclose commission of any offence; (ii) or when there is absolute no legal evidence against the accused, (iii) or when the

evidences likely to be adduced in the case fails to establish the charge, or (iv) the prosecution was initiated with mala fide or vindictive intentions,

(v) there is legal bar in continuation of the same. It is trite law that such wholesome power has to be exercised sparingly, only in appropriate cases,

to secure the ends of justice. The very plenitude of the power requires it's exercise with circumspection and caution only in appropriate cases to

do ex-debito justice. If a persecution does not fall within the purview of above categories, though they are not exhaustive, it cannot be quashed at

it's threshold. Scuttling a prosecution at it's very genesis is not desirable when prima facie allegations on the face of the record discloses

commission of offence requiring full-fledged trial. Such inherent power should not be mechanically exercised to stifle a legitimate trial because that

will be an unwarranted intervention on trial Court's power and will perpetuate manifest injustice. Only to prevent miscarriage of justice or to

correct some grave error apparent on the face of the record, that the power u/s 482 Cr.P.C. should be resorted to sparingly, only in an

appropriate cases.

6. Another settled position in law, through catena of binding precedents by the Apex Court is that at the initial stage, when the high Court is called

upon to quash the prosecution, it is not desirable that the high Court should embark upon a roving enquiry on contested and disputed facts to deny

access to justice for illegitimate reasons. The aforesaid aspect no longer remains res integra and has been subjected to plethora of decisions, both by

Apex Court as well as by this Court, some of which, only for the purposes of clarity and bring home the opinion, are referred to herein below :

7. In the State of Haryana and others Vs. Ch. Bhajan Lal and others, , it has been observed by the Apex Court as under:

108. 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 u/s

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 F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers u/s 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 F.I.R. 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 u/s 155(2) of the Code.

5. Where the allegations made in the F.I.R. 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.

109. 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 F.I.R. 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.

8. In *S. Khushboo Vs. Kanniammal and Another*, , it has been observed by the Apex Court as under :

When the criminal law machinery is set in motion, the superior Courts should not mechanically use either their inherent powers or writ jurisdiction

to intervene with the process of investigation and trial. However, such forms of judicial review can be exercised to prevent a miscarriage of justice

or to correct some grave errors that might have been committed by the subordinate Courts. [See decision of this Court in: *Pepsi Foods Ltd. and*

Another Vs. Special Judicial Magistrate and Others,]. In the past, this Court has even laid down some guidelines for the exercise of inherent

power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana and others*

Vs. Ch. Bhajan Lal and others, , to take note of two such guidelines which are relevance for the present case:

(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.

. (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.

13. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge

against him/her, the proceedings cannot be quashed. In *M/s. Medchl Chemicals and Pharma Ltd. v. M/s. Biological E. Ltd. and others*, AIR 2000

SC 1869, this Court observed that a criminal complaint or a charge-sheet can, only be quashed by superior Courts in exceptional circumstances,

such as when the allegations in a complaint do not support a prima facie case for an offence. Similarly, in *Zandu Pharmaceutical Works Ltd. and*

Others Vs. Md. Sharaful Haque and Others, , this Court has held that criminal proceedings can be quashed but such a power is to be exercised

sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was

further observed that superior Courts ""may examine the questions of fact"" when the use of the criminal law machinery could be in the nature of an

abuse of authority or when it could result in injustice. In *Shakson Belhissor Vs. State of Kerala and Another*, , this Court relied on earlier

precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly

not hesitate to intervene in appropriate cases. In fact it was observed:

One of the paramount duties of the superior Courts is to see that a person who is apparently innocent is not subjected to prosecution and

humiliation on the basis of a false and wholly untenable complaint.

9. In *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, , it has been held as under :

8. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers

on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances

under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of

Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the

exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts,

therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed

upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High

Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as

are necessary to do the right and to undo a wrong in course of administration of justice on the principle ""quando lex aliquid alicui concedit,

concedere videtur et id sine quo res ipsae esse non potest"" (when the law gives a person anything it gives him that without which it cannot exist).

While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section

though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in

the section itself. It is to be exercised *ex debito Justitiae* to do real and substantial justice for the administration of which alone Courts exist.

Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has

power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of

justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the

process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the

Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the

complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur Vs. The State of Punjab*, this Court summarized some categories of cases where inherent power can and should be exercised to

quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the First Information Report or complaint taken at its face value and accepted in their entirety do not constitute the

offence alleged;

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

the charge.

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is

evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not

support the accusations. When exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether

the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of

the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in

exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in

the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed

over to an accused to short-circuit a prosecution and bring about its sudden death.

11. In *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, wherein it has been held by the Apex Court as under :

23. This Court in a number of cases has laid down the scope and ambit of Courts powers u/s 482, Cr.P.C. Every High Court has inherent power

to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the

Court. Inherent power u/s 482, Cr.P.C. can be exercised :

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of Court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers u/s 482, Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is

justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the

process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent

powers in absence of specific provisions in the Statute.

Discussion of decided cases

25. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use this extraordinary power to

prevent injustice and secure the ends of justice. The English Courts have also used inherent power to achieve the same objective. It is generally

agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP*, (1964) AC 1254, Lord Devlin stated that

where particular criminal proceedings constitute an abuse of process, the Court is empowered to refuse to allow the indictment to proceed to trial.

Lord Salmon in *DPP v. Humphrys*, (1977) AC 1, stressed the importance of the inherent power when he observed that it is only if the

prosecution amounts to an abuse of the process of the Court and is oppressive and vexatious that the Judge has the power to intervene. He further

mentioned that the Court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In *R.P. Kapur Vs. The State of Punjab*, this Court summarized some categories of cases where inherent power can and should be exercised

to quash the proceedings :

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

(ii) where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the

offence alleged;

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

the charge.

27. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its

exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not

be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the

facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether

factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule

can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

28. This Court in *State of Karnataka Vs. L. Muniswamy and Others*, observed that the wholesome power u/s 482, Cr.P.C. entitles the High

Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the

Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both

in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of

harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be

administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other

Courts.

29. In Chandrapal Singh and Others Vs. Maharaj Singh and Another, , in a landlord and tenant matter where criminal proceedings had been

initiated, this Court observed in para 1 at page 467 as under :

A frustrated landlord after having met his Waterloo in the hierarchy of Civil Courts, has further enmeshed the tenant in a frivolous criminal

prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may

appear to be superfluous.

30. The Court noticed that the tendency of perjury is very much on the increase. Unless the Courts come down heavily upon such persons, the

whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent

to their frustration by cheaply invoking jurisdiction of the criminal Court.

31. This Court in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, , observed in para 7 as under :

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to

whether the uncontroverted allegations as made prima facie establish the Offence. It is also for the Court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction

is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

11. From above referred to decisions, it is deciphered that when prima facie, an offence is disclosed and prosecution is not circumscribed by the

above referred to categories, it cannot be quashed.

Applying above law on the facts of the present case, it is found that the complainant had contracted marriage with Afjal Khan (A-1) but it ran riot

and (A-1) divorced (R-2) by communicating her divorce by writing three letters to her, dated 6.10.2008, 6.11.2008 and 6.12.2008, and

dispatched them through registered post vide Annexure-2 at regular intervals of one month. Iddat money of Rs. 3,500/- was also sent by money

order to her, which she seems to have accepted. It was mentioned in annexure-2 that (R-2) never wanted to reside with the applicant and, as

desired by her parents, she had renounced the spouse relationship on her own volition and while leaving, she had taken all her stridhan. Last

communication of divorce was dated 6.11.2008. It is further revealed that, when relationships between husband and wife were still subsisting, (R-

2)'s younger sister, Ishrat Bano eloped with (A-1)'s younger brother Amzad Khan (A-4) on 17.9.2008. Regarding the said elopement, First

Information Report was lodged against him on the strength of an order passed on an Application u/s 156(3) Cr.P.C. which had yielded in

registration of FIR of crime No. 2474 of 2008, under Sections 363 and 366 I.P.C. at P.S. Kotwali, District Ghazipur. This was the first initiation

of litigation in between the parties. It seems that after this relationship worsened and marital tie between (A-1) and (R-2) deteriorated and reached

it's lowest nadir to irrevocable and irretrievable stage which resulted in divorcing of (R-2) vide Annexure-2. Three months thereafter, wife (R-2)

lodged the complaint in which she had made reference to the incident dated 23.12.2008, which date is subsequent to third divorce letter dated

6.12.2008. It is worth noting that although these letters of divorce Annexure 2, have been denied to have been received by the complainant (R-2)

but so far as sending of dower (mehar money) of Rs. 3,500/- is concerned, not even a word has been said in the counter-affidavit nor the said

allegation has been rebutted, and therefore, so far as the said aspect is concerned, it has to be taken to be a correct version. In the back drop of

the aforesaid discarded relationships that the wife sought Court's intervention to seek justice and consequently she filed the complaint after four

months against the entire family levelling general and ominous allegations against applicants (A-5), (A-6), (A-7) and (A-8). She is however

categorical in levelling allegations against her husband (A-1) and his parents (A-2) and (A-3). For other applicants her complaint is silent and does

not mention any specific allegation of torture. Thus, it is difficult to conclude that there exist on record credible evidence for the prosecution of

these applicants-(A-5), (A-6), (A-7) and (A-8). The statements under Sections 200 and 202 Cr.P.C. by the complainant and her witnesses

Guddan and Noore Alam does not improve the situation at all. These statements, do not disclose any reliable and creditworthy material for the

prosecution of these applicants. No disgruntled wife should be allowed to harass and humiliate the relatives of her husband to satiate her ego and

vindictive attitude. In the garb of allegations of dowry demand and torture, innocent family members cannot be permitted to be harassed at the

behest of an unscrupulous wife. In respect of all these applicants i.e. Ajhar Khan (A-5), Athar Khan (A-6), Ambiya Khatoon (A-7) and Shaukat

(A-8), their prosecution is frivolous, vexatious and oppressive. This Court, therefore, should not fail in its duty to curb their harassment and

oppression.

12. So far as Amjad Khan (A-4) is concerned, he had eloped along with the sister of the complainant and therefore, he has been roped in the

present case. There is no specific allegation against him as well requiring his prosecution for the charge of dowry demand and torture. In such a

view, the prosecution of Amjad Khan (A-4) also is tainted with mala fides and deserves to be scuttled.

13. On similar facts and circumstances, Apex Court had taken a view curbing harassment of relatives against whom, there was no credible material

and allegations. On this aspect, the reference can be made to two Apex Court's decisions cited here in below :

In Preeti Gupta and Another Vs. State of Jharkhand and Another, , wherein it has been held by the Apex Court as under :

27. Admittedly, appellant No. 1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven

years. Similarly, appellant No. 2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident

had taken place. They had never lived with respondent No. 2 and her husband. Their implication in the complaint is meant to harass and humiliate

the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this

complaint would be an abuse of the process of law.

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36. When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it

would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the

complaint against the appellants.

14. Another decision is Priya Vrat Singh and others v. Shyamjee Sahai AIR 2009 SC (Suppl.) 709. So far as (A-1) and his parents (A-2) and (A-

3) are concerned, because of their relationship with the complainant and the contents of divorce letters, and statements of (R-2) and her witnesses,

there seems to be material against them for their prosecution. If the version of the complaint and the statements of the witnesses are taken to be

correct, on the face of it, the case of (A-1), (A-2) and (A-3) stands on different pedestal than the other applicants. Their prosecution cannot be

quashed at its very inception. In this respect reliance can be had from Apex Court decision in K. Neelaveni Vs. State rep. by Insp. of Police and

Others, , wherein it has been observed by the Apex Court as under :

8. We have given our thoughtful consideration to the submissions advanced and we are inclined to accept the submission of Mr. Guru Krishna

Kumar, learned counsel for the appellant. From a perusal of the allegations made in the First Information Report, it is evident that the appellant has

clearly alleged that her husband had married another lady namely Bharathi and the said marriage had taken place in the presence and with the

support of other accused persons. She had also stated that from the second marriage with Bharathi a girl child was born. In the First Information

Report, it had clearly been alleged that besides gold ornaments other household articles were given in marriage and further she was subjected to

cruelty and driven out from the matrimonial home by the accused persons. In our opinion, the allegations made in the First Information Report, at

this stage, have to be accepted as true, and allegations so made prima facie, constitute offences under Sections 406 and 494 of the Indian Penal

Code. It has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the First

Information Report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the

allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of the Marriage were, gone into or not is a

matter of trial.

9. From what we have said above, we are of the opinion that the High Court erred in holding that the charge-sheet does not reveal the ingredients

constituting the offences under Sections 494 and 406 of the Indian Penal Code.

15. Learned counsel for the respondent relied upon three decisions in Arvind Kumar v. State of U.P. and another, 2010 ILR (All) 55; Shamim

Ara v. State of U.P. and another, 2002 (3) A Cr R 3013 (SC) and an unreported decision of this Bench in 482 Cr.P.C. Application No. 460 of

2011. None of three decisions are of any help to the complainant as the first decision relates to offences under Sections 274, 275, 419, 420, 464,

468 I.P.C. and Section 3/7 Essential Commodities Act and Section 18/ 27 of Drugs and Cosmetics Act and Section 21/22 NDPS Act, middle

one relates to the proceeding u/s 125 Cr.P.C. and the last one relates to quashing of charge-sheet u/s 3/5 Damages to Public Property Prevention

Act. These decisions are wholly out of place and has been incorrectly cited by learned counsel for the respondent complainant.

16. The residue of aforesaid discussion is that this 482 Cr.P.C. Application is allowed in part in respect of Applicants namely Amjad Khan (A-4),

Ajhar Khan (A-5), Athar Khan (A-6), Smt. Ambiya Khatoon (A-7) and Shaukat (A-8). Their prosecution in Complaint Case No. 1076 of 2009

Shabnam v. Afzal and others, under Sections 498A, 504, 506 I.P.C. and 3/4 D.P. Act pending before Additional Chief Judicial Magistrate,

Ghazipur alongwith then-summoning order dated 2.7.2009 are hereby quashed, but this application in respect of Applicants Afjal Khan (A-1),

Irfan Khan (A-2) and Smt. Hajra Khatoon (A-3) stands dismissed and their summoning order dated 2.7.2009 is hereby affirmed. They are

directed to surrender and face the trial. A copy of this judgment be certified to the Trial Court concerned for it's intimation.