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11. *Harmanpreet Singh Ahluwalia and Others v. State of Punjab and Others*, IV (2009) SLT 341=II (2009) DLT (Cri) 757 (SC)=I (2009) DMC 832 (SC). (Referred) (Para 23)
12. *State of Karnataka and Another v. Pastor P. Raju*, V (2006) SLT 708=III (2006) CCR 184 (SC). (Referred) (Para 26)
13. *C.P. Subhash v. Inspector of Police, Chennai and Others*, I (2013) SLT 742=I (2013) CCR 509 (SC). (Referred) (Para 27)

*Counsel for the Parties :*

For the Petitioners : Mr. Prabhjit Jauhar A/W Mr. C. Shankar Reddy, Advocates.

For the Respondent No. 1 : Mr. Rahul Rai K., HC GP.

For the Respondent No. 2 : Mr. H. Mallan Goud, Advocate.

**ORDER**

1. Heard the learned Counsel for the petitioner and the learned Counsel for the 2nd respondent and the learned High Court Government Pleader.

2. The 2nd respondent is the *de-facto* complainant. The complaint which is filed initially came to be addressed to the Gurugram Police, Haryana, on 4-8-2017 and thereafter it appears that the complaint was transferred to Ulsoor Police Station, Bengaluru and came to be registered as Crime No. 399/2017 dated 4-11-2017. The complaint is in a typed format, and the complaint is concluded in this manner:

“We have repeatedly communicated with Apoorve’s parents through emails, text messages, WhatsApp and asked them to return my valuables but they have remained silent. I am scared and afraid as he has started threatening me for a long time now. I am now extremely depressed, having lost 8 years of my precious youth with a bleak and uncertain future. I request and appeal to you to consider my prayer with utmost compassion and to give me justice and restore my dignity. Kindly look into the matter and do the needful.”

3. The case of the *de-facto* complainant is that she met the 3rd petitioner at Bengaluru while he was pursuing his M.D.S., course in the Oxford Dental College, Bengaluru and she was pursuing her Post Graduate Diploma in Management in Wenlingkar Institute of Management, Bengaluru. That the 3rd petitioner befriended her and thereafter proposed his love and expressed his interest to a committed relationship and after his persistent efforts and the promise of a happy and secured married life, the second respondent responded in similar terms. As he appeared to be a good person and also taking note of his education and potential she reciprocated. That she never cared about his background or financial status and after accepting the proposal, she started meeting regularly with the 3rd petitioner and planned for a life together. In 2010, she started working with M/s.HSBC, Bengaluru a Banking Company, after completion of her Post Graduate Diploma course and the 3rd petitioner remained a student on account of the same, she used to take care of his monetary needs with the sole motive that he study’s well. That the 2nd respondent being a Commerce student took active interest in the 3rd petitioner’s presentations, thesis and assignments and all his friends and



batchmates and professors are witness to the said fact.

4. That when her parents started looking out for alliances, she informed the 3rd petitioner who in turn spoke with his parents. The first petitioner visited Bengaluru interacted with the complainant's parents and settled the marriage. That the 2nd petitioner did not accompany the 1st petitioner. That the 3rd petitioner will always be stating that his parents desired to have a Doctor as their daughter-in-law and that too from a rich family. That despite the passage of so many years, the 2nd petitioner has never visited the house of the second respondent. That the Roka Ceremony was arranged by the complainant's family and the wedding was fixed on 28-10-2012. Prior to the marriage, the 1st petitioner and the 3rd petitioner insisted upon celebrating the marriage in a lavish manner and involved themselves. That her father and mother had to spend their entire life earnings to meet the expectations of a happy marriage. That the 3rd petitioner joined Medanta-Medicity Hospital, Gurgaon for a one year Fellowship and the marriage was solemnized as per the Hindu Customs and the couple travelled to Guragaon on the same day as the Reception, organized by the petitioners, was fixed on 31-10-2012. That the 1st petitioner took the entire valuables and jewellery received by the 2nd respondent during the performance of the marriage and it included her 'Streedhan' and that the 1st petitioner is still in possession of the same. That immediately after the marriage, the behaviour of the 3rd petitioner changed and he became violent and that she has photographed the aftermath of the violent acts during the healing process. In December, 2012, she desired to visit her parents and the 3rd respondent had refused to permit the same resulting in an argument, in the course of which the 3rd respondent punched, kicked and slapped her. That she fell sick and during this time, her illness was further compounded by insensitive comments like "*Yeh itni bimar hai toh iske bache kitne bimar honge.*" and that the in-laws ridiculed her and were never supportive and she was forced to go to hospital and get everything done on her own. The 3rd petitioner's aunt called and told her that the 1st petitioner had spoken very ill about her and that the 3rd petitioner being a Doctor is fully aware of her medical condition, neither supported nor protected her and he mercilessly abused her. That she did not inform any one including her parents about the developments, as she hoped that, better sense would prevail and the petitioners would take a turn for the good.

5. That the 3rd petitioner after completion of one year course did not make any serious attempts to secure any employment or start a avenue for earning income and whenever she reminded him of his career he would physically abuse her. He also instigated his mother, by stating that the complainant was jealous of the 1st and 3rd petitioners shopping outings. That the 1st petitioner though aware of the physical abuse by the 3rd petitioner would state that "*Aap dono Jhagad the hain and baggy bekar mein bohot chilati hai.*" That during her first Holi festival after her marriage, the 3rd petitioner took her to his aunt's house where the 3rd petitioner indulged in binge drinking and was not even in a position to return safely to their house. When they reached home, the next day morning, the 3rd petitioner did nothing to protect her when the 1st petitioner abused her. That thereafter the 3rd petitioner joined Clove, a Dental Chain and that she had infact



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made the application as she was familiar with the same, being in the recruitment profession. That the 3rd petitioner had his weekly off on Tuesdays and her weekly off was on Saturdays and that the 3rd petitioner taking advantage, would plan his outings only with the first petitioner ignoring the complainant. That when they moved to Gurgaon, the 3rd petitioner constantly compared himself with his cousins and it is the information of the complainant that he was over ambitious, money minded, materialistic and frustrated and he vented his frustration and jealousy by mistreating the complainant.

6. In 2014, the 3rd petitioner wanted to start a clinic and that the complainant expressed her willingness to hand over her earnings in order to help him to pursue his profession. The petitioners did not treat her as a member of the family and never included her in the planning, including the selection of places for the Clinic and when she questioned the 3rd petitioner about the same he retorted thus, "get money from your parents or fund me then I will include you in my plans." That shortly thereafter one of the petitioners' relatives completed his Engineering in a University in US upon which the 3rd petitioner also wanted to travel to US for further studies and better opportunities and that the 3rd petitioner wanted the complainant to help him out with all the paper work and all the finances required as the paper work was extensive and time consuming and he was not able to prepare himself and he was unreasonable and demanded that she should take care of the logistics regarding admission. That the complainant accepted the same with the fond hope that it would lead to a better career and that he would become a settled person and treat her well. That the 3rd petitioner forced her to meet his tuition fees with one Institute namely, Chopras. That she completed the laborious and tedious process of paper work. That for this purpose, some documents were required from the University at Bengaluru and that the 3rd petitioner commented and addressed her father as "Bikari" and he stated that 'He is sitting at home, ask him to finish all this' and asked him to fund the same. On several occasions, the 3rd petitioner's brother one Anju also took advantage and asked her father to perform several works for him. That one day, while she was afflicted with diarrhea and she was lying unwell on the bed and the 3rd petitioner who came and saw her lying on the bed got furious and attacked her, beat her up mercilessly and the 1st petitioner was also a witness to the same. She states that whenever he wanted some work to be done, he would physically abuse her but despite all this, the complainant hoped for the best in view of the fact that the 3rd petitioner would settle down and everything would fall in place.

7. In June 2014, the complainant's mother was diagnosed with breast cancer and she rushed to Bengaluru to stay by her side and was given an option to work from home by her employers but absolutely there was no moral or any other support from the petitioners and none of them considered it important enough to talk to her and the 3rd petitioner stated that he does not care if her mother dies. That in December, 2014, when the 3rd petitioner had completed his bath and demanded for a towel, she could not immediately provide it as she had visited the nearby provision store and he got wild and physically abused her, punched and attacked with his bag with heavy books inside and she started bleeding and she screamed in pain and the 3rd petitioner realized that he was in trouble,



and that after the incident the complainant has lost her sense of smell and that she was taken by the 3rd petitioner for consultation with a Doctor by name Dr. Ramdas Shetty.

8. That in January 2015, the 3rd petitioner wanted her to accompany him for admission to the College in the proposed course and that he expressed his desire to stay with the complainant's aunt. That in May, 2015 the mother of the complainant was diagnosed with severe health condition and both the complainant and the 3rd petitioner travelled to Bengaluru. Actually, the real motive was not serving the complainant's mother but his Professors. That the 3rd petitioner had threatened the management at Clove Dental Clinic and he had a disagreement with the Senior Doctor one Sheovshevak Pandey. The said Doctor had recommended for disciplinary action and asked the petitioner to conduct himself in a dignified manner. This resulted in the 3rd petitioner reaching home in an agitated manner, which yet again resulted in misunderstandings between the 3rd petitioner and the 2nd respondent. That even when she made a simple request, he used to throw articles in a fit of rage and even made her write his resignation letter and later joined another Clinic called Dental Roots.

9. That in October, 2015 the 3rd petitioner was called for an interview and took the test by USC Herman Ostrow School of Dentistry and the 3rd petitioner insisted that complainant travel with him and he insisted that her cousin takes care of all the paper work. That November, 2015 was full of violence, torture and cruelty as he was frustrated on being waitlisted by the USC and then there was a sudden change in 2015 as the 3rd petitioner got through in the second merit list and she was required to deposit a sum of 3000 Dollars and he demanded that again the complainant's cousin in US make arrangements for payment of the same. That in January, 2016, she completed certain formalities and was proposed to meet the 3rd petitioner in Galleria Market and when she reached there, she found the 3rd petitioner having beer with his colleague, Dr. Shruthi Lakhanpal and he had never mentioned about the said person either in his discussion with the complainant and that the complainant later realized and came to know that the said Doctor Shruthi was going to break her marriage and join the 3rd petitioner in the US. That the 3rd petitioner was fighting with the complainant every other day and used to humiliate her by calling her as "Moti Bhains" and asked her to look at other girls of her age who were much slimmer and during one of the days when she demanded to have one more serving of rice, he threw her plate on the floor and this occurred in the presence of the 1st petitioner. That shortly thereafter they shifted their house from New Railway Road to Golf Course Road. Petitioners 1 and 2 were busy decorating the house with items worth lakhs of rupees and luxurious items although she was in sorrow and pain, nobody bothered but were more focused on their new house. That the 3rd petitioner started staying out and returning late in the night and was fully drunk and on some days when the complainant started questioning him on his late night arrivals, he started staying out and whenever quizzed would state that he was either with his cousin or with aunt in Noida or Delhi. That when the time came to leave for US to plan his travel and stay in US, the petitioners told her that they were not keen on her joining him, in the US and that in fact the petitioners and the 3rd petitioner's brother shouted and screamed. His father told her



"My son will not take a loan for himself and definitely not for you nor would provide for you, I don't want you to go". That in the last week of February, 2016, the 3rd petitioner informed his parents that he was not interested in the complainant and he wanted divorce and thereafter stopped talking to her and also coming to the room. That during one of their outings when they were driving on N.H.8 when she questioned him why he is not interested in talking to her, he asked her to jump out of the moving car and then proceeded to drop her at M.G. Road Metro Station and asked her to jump in front of the train and on another occasion asked her to consume harpic and die. He also threatened to throw her out of the house. Despite that, the complainant begged with them, that she will not question anything but yet they were adamant. That petitioners 1 and 2 asked her to go and stay with her parents and even asked her to resign her job.

10. That when the 3rd petitioner was preparing to leave for the USA she begged with the 3rd petitioner to take leave of her parents and meet them before he shifted to the US but the 3rd petitioner refused to meet her parents. That on 7-4-2016 he took her to the US Clinic and thereafter asked her to wait till he attended on a patient and thereafter he left her alone in the mall and told her to go home and she cried all the way back home. That on 9-4-2016 she had an occasion to look into the 3rd petitioner's phone and she saw the messages like 'I love you' and vulgar/obscene chats with Shruti Lakhanpal and the 3rd petitioner also confessed his love for the said person and admitted that he was having an affair with her and when the complainant expressed that she would expose him to her parents, he told if she remain silent she could accompany him to US and promised that he would never speak or meet Shruti again and she got carried away with the false promises and forgave him in the hope of having a chance to stay with him and the petitioner even called upon the said Doctor and told her that he was not prepared to sacrifice the marriage and divorce the complainant for the sake of their affair and that the complainant later realised that this was just to fool her. That the 3rd petitioner begged her to travel to the US only with an intention of preventing the complainant from making public his affair with the said Doctor Shruthi and thereby stop his travel to the US.

11. On 15-04-2016, the complainant and the 3rd petitioner traveled to US in two different flights as the complainant had booked her travel at the last minute. That she traveled to the US on her own expenses and took care of finances between April 15, 2016 to May 5, 2016. He started behaving very differently in the last two weeks of their stay in US that on her return to India she found that the 3rd petitioner had blocked her Whatsapp contact and she realized that he had taken her along only to ensure a smooth travel and entry into the US and after that he had started once again calling Dr. Shruthi and whenever she confronted him he used to abuse her physically even to the extent of sexually abusing her and he used to even hit her even when she ate more.

12. That in June, 2016 she met the 1st petitioner in Goa on a Holiday Trip arranged by the 3rd petitioner's cousins in Goa. In the Airport she begged her to take her back to Guragaon but he refused stating that the 2nd petitioner did not like her presence and that she cried a lot and that the complainant was not even invited by the 1st petitioner but only by the cousins of the 3rd petitioner and after the 3rd petitioner blocked the Whatsapps



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he threatened she would expose him to her parents and thereafter proceeded to do so. That her parents spoke to him and gave him another chance as the complainant wanted to stay with him. That he begged her parents and requested them not to tell his parents about this affair. But thereafter he called the complainant and told her that he wanted to divorce her.

13. In July, 2016 the 3rd petitioner is said to have told her that he wanted to give the marriage another chance and promised to send the documents to enable the complainant to obtain visa to travel back to US but on the condition that she bears all the expenses. That in August, 2016, the 3rd petitioner went and stayed with her cousins in California and they took care of him. The 3rd petitioner made her to buy his tickets and pay for his telephone bill. He invited her to the US for his "white coat" ceremony upon his Graduation. That she spent about 2 lakh for his trip to US and meanwhile she had lost her weight to meet his expectations and during the trip he humiliated her by saying "*Ek Baar bulaya tha tume, Kutteh ki tarah mere peeche aagayi*". The 3rd petitioner asked her to make arrangements to deposit fees through her relatives in US and on all three occasions she deposited a sum totalling 600 Dollars and in the interregnum the 1st and 2nd petitioner had stopped talking to her and also refused to return her brother's documents which were in her room. Despite her crying and begging with them to allow her to retrieve the same and ultimately they returned the same.

14. That in November, 2016 the 1st petitioner called her and asked if she could use the complainant's HDFC Bank Account to deposit a few lakh of amounts to which she refused. That she caught the 3rd petitioner online many times with the said Dr. Shruti and confrontations became the order of the day resulting in vocal altercations, abuses and threats. In December 2016, the 3rd petitioner sent documents to enable her to apply for visa. That she was pressurized to buy his ticket to New York and that she had spent about Rs. 55,000/- for the same and she realized that Dr. Shruti was also in New York around the same time.

15. That in the meanwhile, she and her parents visited the petitioners 1 and 2 and invited them for her brother's wedding and gave them silver, silk sarees, clothes etc., but they were extremely indifferent and to please the 3rd petitioner she told him that it was a smooth meeting. That she was too scared and hesitant even to stay with petitioners 1 & 2 in the house. That none of them attended the wedding in February, 2017 and the 3rd petitioner cited travel ban as the reason for his not attending the marriage. That later she realized that their absence was a planned one and this was revealed to her when she stumbled upon the message exchanges between the 3rd petitioner and the 2nd petitioner. That she resigned the job as she was to relocate to US. That she left for US on 25th March, 2017. The 3rd petitioner insisted that she pays the rent for the house for that month and her father deposited 600 + 700 dollars and also sent another sum of 1500 Dollars for her maintenance during the stay. The petitioners 1 and 2 refused to provide for her and the 3rd petitioner was both incapable and unwilling. That after she reached US, the 3rd petitioner once again confessed with about his affair with Dr. Shruti Lakhanpal and told that he plans to marry her and that she has cleared all her exams for admission in the USA.



and visited USA twice. That she had arrived to the US on his dependant F2 Visa and she was trying to make the marriage work. While the 3rd petitioner was planning to get rid of her by getting consent for divorce and marrying Dr. Shruti and the harassment included calling her useless, dependant, unfit to work in US, etc.

16. That he would constantly look at Dr. Shruthi's photographs and describe her looks. He would compare her with Dr. Shruthi and taunt her and would constantly ridicule her family and call her father a 'bhikhari' and when she protested, he silenced her by using force and that his parents were in support of him and against her. That her parents spoke to said Dr. Shruthi and requested her not to break her home, to which the said Dr. Shruthi is said to have confessed that she will break-up with him.

17. On 8.5.2017, there was an argument in the middle of the night and 3rd petitioner got violent and pushed her around and also made her lie on the floor and even asked her to get out of the house if she could not keep quiet. He even threatened to kill her and asked her to hang herself. That the complainant recorded the entire conversation. That 3rd petitioner threatened to ruin the career of her brother and he also claimed that 2nd petitioner could ruin the complainant and her family by filing false cases. That on 28.6.2017, the complainant complained to the US Police and also to 3rd petitioner's College authorities and that 3rd petitioner was interrogated and the case has moved to the next stage. That she has sought the help of the NGOs in the US and that she has also informed the Consulate General and concluded the complaint.

18. Learned Counsel for the petitioners would submit that a plain reading of the complaint does not reveal a single instance of any demand for dowry under the Dowry Prohibition Act, 1961 nor does it disclose any of the ingredients which go on to constitute the offence punishable under Sections 406, 325, 385 and 34 of Indian Penal Code. Learned Counsel would submit that initially the complaint was not registered, later the same came to be transferred to Bengaluru where the 2nd respondent-complainant was residing and came to be registered on 4.11.2017. He would submit that it is not even the case of the complainant that there has been a demand for any dowry and even the claims regarding payment of money, are in the course of their day-to-day life and the reasons for alleged request for making payments and subsequent acknowledgement of repayment of amount cannot by any stretch of imagination, be considered as a demand for dowry.

19. He would submit that admittedly, the marriage was a love marriage and the Courtship was concluded with the parents formalizing the relationship. He would submit that the allegations are to state the least, bald and vague and bereft of any details and even if the complaint as lodged is taken as true, there is absolutely no material to demonstrate any of the charges. Even if the allegations in the complaint are taken to be true for the sake of argument, none of the allegations go to constitute any offence punishable either under the Dowry Prohibition Act or under the Indian Penal Code. There is not even an iota of material, which makes out any offence and in fact he would submit that 1st and 2nd petitioners have been roped in deliberately to coerce the 3rd petitioner to come to terms and also with the aim of pressurizing him to abandon his job in the US and force



him to come down to India. He would submit that the entire complaint is a half narrative and there is absolutely no material whatsoever to demonstrate any physical abuse, much less, any sexual abuse. He would submit that the complaint is craftily stitched and even such a complaint running into more than 15 pages does not reveal the commission of any offence. He would further submit that even assuming that the allegation of extra marital affair is true for the sake of arguments, the same cannot be construed as an act amounting to dowry harassment. He would submit that the very complaint contradicts the allegations set-out by the *de-facto* complainant. In this regard, he would invite the attention of the Court to that portion of the complaint relating to her statement in page No. 10 wherein, it is alleged that the 2nd petitioner along with other petitioners and one more son had strongly protested her accompanying the 3rd petitioner to the US and thereafter, he would take the Court to the statement in page No. 13, wherein the complainant acknowledges that it was the 3rd petitioner, who forwarded the documents to enable her to travel to US and that too on a dependent VISA.

✓ 20 It is contended that the allegations are not only vague but omnibus and general in nature and only reflect a normal wear and tear in the marriage and there is no specific instance of either demand for dowry or the payment of dowry and in the absence of any such specific allegation, the respondent – Police erred in registering the case even without conducting a preliminary enquiry/investigation as laid down by the Hon'ble Apex Court in the case of *Lalita Kumari v. Government of Uttar Pradesh and Others* IX (2013) SLT 1=IV (2013) DLT (Cri) 910 (SC)=(2008) 14 SCC 337. He would also submit that the registration of FIR for the offence punishable under Section 406 of Indian Penal Code is absolutely unsustainable as there is no entrustment or misappropriation as mandated under Section 406 of Indian Penal Code. He would also point out that the registration of the FIR for the offence punishable under Sections 3 and 4 of the Dowry Prohibition Act is totally without jurisdiction as **not even an iota of material has been placed to demonstrate the demand much less receipt of any dowry**. Even assuming that in deed certain amounts have been paid by the relatives of 2nd respondent, even as per the complaint itself on the internal page No. 9, last sentence in paragraph No. 2, it is stated by the complainant 'All this was later paid by Apporve's father after requesting and begging him multiple times to repay my cousin'. He would contend that the amounts advanced as loan or an assistance and repaid, can by no stretch of imagination be construed as either a demand for dowry or payment of dowry.

21. Learned Counsel for the petitioners would place reliance on the ruling of the Hon'ble Apex Court rendered in the case of *K.V. Prakash Babu v. State of Karnataka*, VIII (2016) SLT 225=IV (2016) DLT (Cri) 730 (SC)=III (2016) DMC 737 (SC)=(2017) 11 SCC 176 (paragraph Nos. 14 and 15). He would lastly contend that the instant **complaint is nothing but a counter blast to the divorce proceedings initiated by 3rd petitioner in the US**. It is submitted that 3rd petitioner has moved the Superior Family Court at Los Angeles in USA and 2nd respondent was notified on 25.7.2017, who was then residing with her aunt in San Francisco and on being notified she immediately left the US and upon reaching India proceeded to file a complaint on 4.8.2017. It is further



submitted that it is true that 3rd petitioner was called for an enquiry by the US Police with regard to the complaint lodged by 2nd respondent and after enquiry, the US Police have exonerated him. The learned Counsel would submit that, the complaint to set in motion the criminal law is vitiated by *malafides* and instituted with an ulterior motive of wreaking vengeance and being borne out of personal grudge and hence the same requires to be quashed. Reliance is placed on the following rulings of the Hon'ble Apex Court in the following cases: ✓

- (i) *Rashmi Chopra v. State of Uttar Pradesh and Another*, IV (2019) SLT 335=II (2019) DMC 225 (SC)=(2019) 15 SCC 357 (paragraph Nos. 22, 24, 25 and 29),
- (ii) *State of Haryana and Others v. Bhajan Lal and Others*, 1990 (SLT Soft) 162= AIR 1992 SC 604 - (paragraph No. 108),
- (iii) *Vineet Kumar and Others v. State of Uttar Pradesh and Another*, III (2017) SLT 376=II (2017) DLT (Cri) 232 (SC)=(2017) 13 SCC 369 (paragraph No. 41),
- (iv) *Preeti Gupta and Another v. State of Jharkhand and Another*, VI (2010) SLT 7=II (2010) DMC 387 (SC)=(2010) 7 SCC 667,
- (v) *Neelu Chopra and Another v. Bharti*, 2012 (DLT Soft) 4 (SC)=(2009) 10 SCC 184 (paragraph No. 5) and
- (vi) *Varala Bharath Kumar and Another v. State of Telangana and Another*, VII (2017) SLT 595=IV (2017) DLT (Cri) 369 (SC)=III (2017) DMC 529 (SC)=(2017) 9 SCC 413 (paragraph Nos. 8 and 9).

22. As regards cruelty, learned Counsel would submit that there is no specific allegation of cruelty and if the complaint is read in its entirety, it demonstrates neither any method or modus adopted by the accused-petitioners. In fact complaint reveals that 2nd respondent remained with the petitioners for a very short time. In this regard learned Counsel would place reliance on the rulings of the Hon'ble Apex Court reported in the case of *Vipin Jaiswal v. State of Andhra Pradesh*, II (2013) SLT 767=II (2013) DLT (Cri) 117 (SC)=I (2013) DMC 700 (SC)=(2013) 3 SCC 684 and *Appasaheb and Another v. State of Maharashtra*, I (2007) SLT 188=I (2007) DMC 143 (SC)=I (2007) DLT (Cri) 1 (SC)=(2007) 9 SCC 721.

23. As regards the alleged property of *de-facto* complainant, he would invite the attention of the Court to documents No. 5 and 6, which not only lists the items receivable by 2nd respondent but also the acknowledgment for having received the same i.e., even prior to the lodging of the complaint. He would contend that these said facts alone would suffice to demonstrate the *malafide* intention of the *de-facto* complainant. He would submit that certain sums amounting to \$8792 USD have been transferred by 2nd petitioner to the account of the complainant's cousin one Siddu in USA. He would contend that the complaint is a half truth and half concoction. Lastly, he would place reliance on the ruling rendered by the Hon'ble Apex Court in the case of *Harmanpreet*



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*Singh Ahluwalia and Others v. State of Punjab and Others*, IV (2009) SLT 341=II (2009) DLT (Cri) 757 (SC)=I (2009) DMC 832 (SC)=(2009) 7 SCC 712 (Paragraph Nos. 30 and 32) to contend that the larger part of the alleged offence all having allegedly been committed beyond the borders of this Country and the same having been reported to the authorities there, it is impermissible for the same to be reinvestigated by the local police. This would only further go to demonstrate the ulterior motive with which the complaint is lodged.

24. *Per contra*, learned Counsel for 2nd respondent – *de-facto* complainant would submit that the allegations set-out in the complaint clearly bear out the commission of offences registered by the respondent -Police. That the allegations *prima facie* demonstrate the commission of offence and the matter is one that requires to be gone into and demonstrated after a full-fledged trial. That the investigation is stymied on account of the interim order granted by this Court and but for the interim order, the Police would have collected the materials to demonstrate the culpability of the accused. That 2nd respondent has been subjected to extreme cruelty and instant petition is liable to be rejected. The 2nd respondent has produced certain receipts for having purchased silver articles at Annexure-A, Discharge Summary relating to the mother of 2nd respondent at Annexure-B, a copy of the NBDE application, a copy of the Credit Card statement, a copy of the Air Ticket, another Discharge Summary relating to 2nd respondent's mother, another Air Ticket, Bank Passbook entries and copies of the chat extracts.

25. During the course of arguments, learned Counsel for the petitioners has placed on record a communication addressed to the 3rd petitioner by the office of the City Attorney with regard to the alleged violation of the Penal Code Section and that the matter has been resolved and no complaint is filed against 3rd petitioner, pursuant to the complaint by the *de-facto*/2nd respondent complainant.

26. *Per contra*, 2nd respondent has placed reliance on the ruling rendered by the Hon'ble Apex Court in the case of *State of Karnataka and Another v. Pastor P. Raju*, V (2006) SLT 708=III (2006) CCR 184 (SC)=(2006) 6 SCC 728 and would take this Court though paragraph No. 15 to contend that entertaining the petition under Section 482 of Cr.P.C. without giving scope for any investigation or at the preliminary stage and thereby pre-empting any investigation by an interim relief is improper and quashing the complaint on the basis of lack of material thereafter is unsustainable. Paragraph No. 15 of the said judgment reads as under:

"15. There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15-1-2005 and the petition under Section 482, Cr.P.C. was filed within 12 days on 27-1-2005 when the investigation had just commenced. The petition was allowed by the High Court on 23-2-2005 when the investigation was still under progress. No report as contemplated by Section 173, Cr.P.C. had been submitted by the in-charge of the Police Station concerned to the Magistrate empowered to take cognizance of the offence. Section 482, Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court



or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in *Union of India v. Prakash P. Hinduja* where after referring to *King Emperor v. Khwaja Nazir Ahmad*, *H.N. Rishbud v. State of Delhi*, *State of W.B. v. S.N. Basak*, *Abhinandan Jha v. Dinesh* and *State of Bihar v. J.A.C. Saldanha*, it was observed as under in para 20 of the Report (SCC) : (*Prakash P. Hinduja* case, SCC p. 209)"

"20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the Police Station in Court under Section 173(2), Cr.P.C., this field being exclusively reserved for the Investigating Agency."

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482, Cr.P.C. when the matter was still at the investigation stage."

27. Learned Counsel for 2nd respondent would also place reliance on the ruling of the Hon'ble Apex Court rendered in the case of *C.P. Subhash v. Inspector of Police, Chennai and Others*, I (2013) SLT 742=I (2013) CCR 509 (SC)=(2013) 11 SCC 559 and would take this Court through paragraph Nos. 7 to 11, wherein, the Hon'ble Apex Court after examining the legal position with regard to the exercise of powers under Section 482 of Cr.P.C or under Article 226 of the Constitution of India in relation to pending criminal proceedings including FIRs under investigation, has specifically held that it is fairly well settled position by a long line of decisions that where a complaint makes out the commission of an offence, the High Court should not in the ordinary course invoke its powers to quash the such proceedings except in rare and compelling circumstances as enumerated in the decision of the Hon'ble Apex Court in the case of *State of Haryana and Others v. Bhajan Lal and Others*.

28. Learned High Court Government Pleader would reiterate the contentions advanced by learned Counsel for 2nd respondent and would reiterate the complaint allegations and seek for dismissal of the petition.

29. Learned Counsel for the petitioners has also placed certain photographs of the petitioners and 2nd respondent after marriage, more particularly, during her visit at the time of the 3rd petitioner's graduation and the trip where 2nd respondent joined 1st petitioner and other relatives during a holiday in Goa i.e., in the absence of 3rd petitioner, who was away in the US. Though the photographs are not denied yet not much weightage can be added as they are not materials which conclusively prove either the innocence or guilt of the petitioners one way or the other though the same would show 2nd respondent



as a happy person in various settings and in the company of some of the petitioners.

30. Be that as it may. The consideration of the petition requires to be centered around the allegations as contained in the complaint and the objections of 2nd respondent for considering the petition on the ground that the petition is at an too early a stage.

31. It is seen that divorce proceedings have been initiated by 3rd petitioner in the Superior Family Court at Los Angeles, State of California, USA and notice of the proceedings has been served on 2nd respondent while she was staying with her aunt in the USA. It is not in dispute that thereafter, she has left USA and upon reaching India, has lodged a complaint on 4.8.2017. The complaint has been considered by the Gurugram Police and for reasons best known, the complaint stood transferred to the Halasuru Gate Women Police Station, Bengaluru and came to be registered as Crime No. 0399/2017 on 4.11.2017. Thus, the matter was not only primarily looked into by the Police at Gurugram thereafter, the matter came to be transferred to Police at Bengaluru where the complainant was staying and it could be safely presumed that investigation was taken up on 4.11.2017 and that the instant petition was filed into this Court on 17.7.2018. Thereafter, the matter was listed on 29.8.2018 for compliance of office objections and the matter came to be listed before this Court for consideration of interim relief on 4.9.2018 i.e., almost more than year after the complaint was lodged i.e., on 4.8.2017. Even assuming that the date of transfer of the complaint to Bengaluru is to be taken as the date of complaint, even then more than 10 months had passed by before any interim order came to be granted. Hence, by no stretch of imagination can it be held that the instant petition has scuttled the investigation.

32. The facts of the case upon which reliance is placed, would go to show that the High Court was approached within a mere 12 days of the registration of the FIR. On the contrary in the instant petition and there was merely a stay of further proceedings insofar as 3rd petitioner alone was concerned, by order dated 4.9.2018. Insofar as 1st and 2nd petitioners are concerned, it is submitted that 1st and 2nd petitioners were enlarged on bail pursuant to the order of anticipatory bail granted by the Court of XLV Additional City Civil and Sessions Judge, Bengaluru City (CCH – 46) by order dated 23.3.2018, a copy of which is produced along with the petition. It is submitted that as per the anticipatory bail order granted by the Court, 1st and 2nd petitioners were required to appear before the Police within 15 days without fail and that more importantly, liberty was also granted to the Investigating Officer to seek for custody of 1st and 2nd petitioners with the leave of the Court notwithstanding the order of bail. It is submitted that after the grant of anticipatory bail, 1st and 2nd petitioner appeared before the Investigating Officer and joined in the investigation. That in fact, the articles that were remaining in the matrimonial home were also brought and handed over in the presence of the Investigating Officer. It is submitted that 3rd petitioner continues to remain in US. In that view of the matter, it can by no stretch of imagination be contended that this instant petition has in any manner scuttled the investigation. It is not the case of 1st respondent - Police that the petitioners have either evaded questioning or that they have suppressed any material or are not assisting the investigation. In that view of the matter also, the said



objection requires to be rejected and is accordingly rejected.

33. This Court, having heard the learned Counsel on both sides in detail and having adverted to their arguments and to the rulings, has given its anxious consideration to the rival contentions.

34. From a reading of the complaint in general as contended by learned Counsel for the petitioners, it could be gathered that it appears to be a case of "normal wear and tear" as is experienced in any marital life. Apparently, even as per the complainant, no life threatening or any injury permanently incapacitating the complainant or maiming the complaint were inflicted by 3rd petitioner. It is also the admitted case that the 2nd respondent - complainant, on a query by the Doctors, has given other reasons as the cause for certain injuries suffered several years ago. That apart, even one or two injuries that are mentioned, even as per the complainant, were not inflicted with the help of any weapon or dangerous instrument. That apart, as could be observed the complaint does not disclose of any harm to the life or limb and whether it would serve the interest of justice to drive the parties to undergo travails of a trial on facts which even as per the complainant stand rebutted by records sought to be produced by her itself. That apart, even as per the case of the *de-facto* complainant, she had accompanied the petitioners to the matrimonial home at Haryana. That she had carried all her property to the matrimonial home or in other words, she had handed over all her gifts and *Stridhan* property to 1st petitioner when they left for matrimonial home immediately after marriage, which appears to be in the regular course and normal conduct of bride and in-laws for safe keeping. It is neither alleged that there was any inducement nor coercion by the petitioners to part with the in possession and does not demonstrate any entrustment of the property or conversion or appropriation of the property for their own use. In fact the documents clearly demonstrate the handing over and receipt of the property by the complainant herself. In that view of the matter, the alleged charge under Section 406 of Indian Penal Code is wholly unsustainable.

35. Insofar as the registration of offence pending under the Dowry Prohibition Act, the entire reading of the complaint does not disclose even a single claim by the 1st and 2nd petitioners, having demanded any dowry before or after the wedding. The only instances narrated are some amounts said to have been given by the cousins of the complainant, who were residing in US when the 3rd petitioner visited the U.S.A. It is not the case of the complainant that the said amount was demanded as dowry but on the other hand, it is the case of the complainant that the said amount was for meeting some shortage in the payment of fees or enrolment charges etc. in the US and that it was urgently required by the 3rd petitioner alone. It has also come on record that the said amounts, in all totaling to \$ 8792 USD, have been paid by 2nd petitioner to the relatives of the complainant towards reimbursing the amounts loaned by them to 3rd petitioner. The said advances can by no stretch of imagination be considered as dowry or much less demand for dowry. It is not in dispute that the complainant had initiated criminal complaint against 3rd petitioner before the Police in USA and the closure of the same has also been placed before this Court by the petitioners. Earlier when queried about the same, learned



Counsel for 2nd respondent had pleaded ignorance. Upon which the learned Counsel for the petitioners has placed a copy of the same before the Court.

36. Be that as it may. The fact that the proceedings had been initiated at her instance by the local police in USA is admitted. If that be the case, whether there could have been another complaint and prosecution on the same set of facts by the local police. Admittedly, the incident is said to have occurred in USA and local law enforcement authorities, taking cognizance of the same investigated and thereafter had found no material and ordered closure of the same. If that be the obtaining facts, it cannot be gainfully argued that it is open for 1st respondent - Police to reinvestigate the matter, which even as per the complainant occurred in USA and no purpose would be served in permitting trial in respect of a matter, which stood ordered closed by the Competent Authorities. Apart from the mere allegations, there is no material whatsoever of any nature to demonstrate the injuries suffered or even occurrence of the incident as narrated by the complainant. It boils down to the word of one against the other.

37. Lastly, as rightly contended by learned Counsel for the petitioners, the instant complaint is nothing but a counter blast to the divorce case instituted by 3rd petitioner before the Superior Family Court at Los Angeles. It is a matter of record that 2nd respondent had been served during her stay in the US at her aunts place and apparently, the said step or said action has not been taken to kindly by 2nd respondent, who immediately on arrival to India has proceeded to lodge a police complaint and certainly it could be termed as nothing else but a counter blast. That apart, as rightly contended by learned Counsel, the complaint itself, is self-contradictory. In one breath, she would say that petitioners and their other family members have seriously objected to her going to US or accompanying 3rd petitioner to US and in another breath, she would admit that she traveled to the US on the strength of the dependant Visa, sponsored by the 3rd petitioner. It is interesting to note the dichotomy in the case of the complainant. She would state that she made all the arrangements for their travel to US at the first instance when he initially joined the course. In the same breath, she would proceed to state that she traveled on a difference airline as she made arrangements for herself in the last minute. All these statements virtually contradict each other.

38. That apart though marriage was performed in October-2012, the complainant had returned to be beside her mother by June-2014 on account of medical emergency. The very fact that the complainant was sponsored on dependant VISA would only go to demonstrate that 3rd petitioner has voluntarily offered to support her during her stay in the US. Dependant VISA is granted by the country of destination only when the person, who sponsors has got sufficient means to support himself and his dependent and also has permission to remain in the country. That very fact alone that she was permitted into the USA on dependant VISA is suffice to discard her allegations. In one breath, the complainant states how she begged and pleaded 1st and 2nd petitioners to permit her to stay in matrimonial home and in the same complaint at internal page No. 13, in unnumbered paragraph No. 4, she would state as below:

"I was too scared and hesitant even to stay in their house."



39. This statement follows the narration of the incident of she and her parents visiting her matrimonial home to invite 1st and 2nd petitioners for her brother's wedding. As observed by this Court, the complaint allegations are self-contradictory. Mere poking fun without there being any motive to cause hurt or a mere stray remark by no stretch of imagination can be construed a cruel act. As rightly stated by learned Counsel for the petitioners, every marriage goes through a period of wear and tear and on a reading of the complaint, it appears that the complaint is nothing but an attempt to blow out of proportion, the usual arguments and disagreements between a wedded couple going through a lean patch. Larger portion of the complaint allegations stem out of an alleged affair between 3rd petitioner and one Dr. Shruthi and apart from self serving statements, there is absolutely no material placed by the complainant to demonstrate any such illicit relationship between 3rd petitioner and a third party. The manner, tone and tenor of the complaint leaves no doubt that the complaint is lodged with the sole and *malafide* intention of wreaking vengeance and destroy the career and life of the petitioners, more particularly, the 3rd petitioner.

40. In the opinion of this Court, the instant case falls within the exceptional cases carved out by the Hon'ble Apex Court in the case of *State of Haryana and Others v. Bhajan Lal and Others* (supra), i.e., exceptional cases, which demand exercise of inherent powers vested in this Court under Section 482 of Cr.P.C and as summed up by the Hon'ble Apex Court in paragraph No. 108 sub-para 7. That apart, in the opinion of this Court, this is a case, which falls within the 3rd category of cases as set out in paragraph No. 108.

41. Apart from the say of the complainant, there is absolutely no other material to demonstrate the case. In that view of the matter, this Court is of the considered opinion that the petitioners have made out a case for exercise of powers vested in this Court under Section 482 of Cr.P.C and Article 226 of the Constitution of India. Accordingly, the writ petition is allowed.

The proceedings in Crime No. 399/2017 registered by respondent No. 1 – Police, pending on the file of IV Additional Chief Metropolitan Magistrate, Bengaluru are hereby quashed.

*Writ Petition allowed.*

III (2021) DMC 169 (Mad.)

MADRAS HIGH COURT

G.K. Ilanthiraiyan, J.

ARUN KUMAR — Petitioner

*versus*

STATE & ANR.— Respondents

*Crl. O.P. No. 4373 of 2020 and Crl. M.P. Nos. 2508 & 2509 of 2020 —  
Decided on 30.9.2020*

*Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 —*

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