SHAKSON BELTHISSOR

v.

STATE OF KERALA & ANR.

(Criminal Appeal No. 249 of 2004)

JULY 6, 2009

[DR. MUKUNDAKAM SHARMA AND DR. B. S. CHAUHAN, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Petition under – Quashing of – FIR and charge sheet against husband alleging commission of offence u/s. 498A IPC – Application u/s.482 – Dismissal of, by High Court – Held: Not correct – No ingredient of s.498A IPC in FIR or charge sheet to prima facie constitute a case of cruelty as defined u/s. 498A – Neither explanation (a) or (b) of s. 498A attracted – Thus, FIR and charge sheet against husband quashed – Order of High Court aside – Penal Code, 1860 – s.498A.

The question which arose for consideration in this appeal was whether High Court was justified in dismissing the petition u/s. 482 Cr.P.C. for quashing the FIR and the charge sheet against appellant-husband for the alleged commission of offence u/s. 498A IPC.

Allowing the appeal, the Court

HELD: 1 The scope and power of quashing a first information report and charge sheet under section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. [Para 9] [1195-C-D]

A *Nagawwa v. Veeranna Shivalingappa Konjalgi* **(1976) 3 SCC 736,** *Drugs Inspector v. Dr. B.K. Krishna* **1981 (2) SCC 454;** *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* **1983 (1) SCC 1;** *State of Haryana v. Bhajan Lal* **1992 Supp. (1) SCC 335;** *Pepsi Foods Ltd. and Anr. Vs. Special Judicial* B *Magistrate and Others* **1998 (5) SCC 749; S.** *W. Palanikar v. State of Bihar* **2002 (1) SCC 241;** *Indian Oil Corpn. v. NEPC India Ltd.* **(2006) 6 SCC 736;** ***Kalyani v. Janak C. Mehta and Others*** **(2009) 1 SCC 516 - referred to.**

C **2.1. In the light of the language used in the section 498A IPC, the provision would be applicable only to such a case where the husband or the relative of the husband of a woman subjects the said woman to cruelty. When the ingredients of the said section are present in a particular case, in that event the person concerned against whom** D **the offence is alleged would be tried in accordance with law in a trial instituted against him and if found guilty the accused would be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The said section contains an explanation, which** E **defines "cruelty" as understood under section 498A IPC. In order to understand the meaning of the expression 'cruelty' as envisaged under section 498A, there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as** F **to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman. [Para 21] [1206-C-F]**

2.2. On examination of the facts of the present case, G **particularly the FIR and the charge sheet it is found that there is no such allegation either in the FIR or in the charge sheet making out a prima facie case as narrated under explanation (a). There is no allegation that there is any such conduct on the part of the appellant which could be said to be amounting to cruelty of such a nature as is** H

likely to cause the respondent no. 2 to commit suicide or to cause any injury to her life. The ingredient to constitute an offence under explanation (a) of section 498A IPC are not at all mentioned either in FIR or in charge sheet and in absence thereof, no case is made out. Therefore, explanation (a) as found in section 498A IPC is clearly not attracted in the instant case. [Para 22] [1206-F-H; 1207-A-B]

2.3. In order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand. When the allegation made in the FIR and charge sheet is examined in the instant case in the light of the said provision, no prima facie case even under the aforesaid provision is made out to attract a case of cruelty. [Para 23] [1207-B-D]

2.4. The marriage between the appellant and respondent No. 2 was performed on 23.10.1997 when it is alleged that Rs. 5 lakhs was given by the parents of respondent No. 2 to the family of appellant as dowry. The FIR was filed in the month of April, 2002 and in the said FIR there is no allegation that subsequent thereto any harassment was made by the appellant with a view to coercing her or any person related to respondent No. 2 to meet any unlawful demand or any property. [Para 24] [1207-E-F]

2.4. Neither explanation (a) nor explanation (b) of section 498 A IPC is attracted in the instant case. It is crystal clear that neither in the FIR nor in the charge sheet there is any ingredient of section 498A IPC, which could *prima facie* constitute a case of cruelty as defined in that section. Thus, it is established that on a reading of the

A **FIR as also the charge sheet filed against the appellant no case under section 498A is made out on the face of the record, and therefore, both the FIR as also the charge sheet are liable to be quashed in exercise of the powers under section 482 of the Cr.P.C. High Court failed to**
B **appreciate the facts in proper perspective, and therefore, committed an error on the face of the record. The proceedings initiated against the appellant under section 498A IPC are quashed. [Paras 25, 26 and 27] [1207-F-H; 1208-A-C]**

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Case Law Reference:

1976 (3) SCC 736	**Referred to.**	**Para 10**
1981 (2) SCC 454	**Referred to.**	**Para 11**
D **1983 (1) SCC 1**	**Referred to**	**Para 12**
1992 Supp. (1) SCC 335	**Referred to.**	**Para 13**
1998 (5) SCC 749	**Referred to.**	**Para 15**
2002 (1) SCC 241	**Referred to.**	**Para 16**
E **2006 (6) SCC 736**	**Referred to.**	**Para 17**
2009 (1) SCC 516	**Referred to.**	**Para 18**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
F No. 249 of 2004.

From the Judgment & Order dated 28.10 2002 of the High Court of Kerala at Ernakulam in CRMC. No. 9376 of 2002.

M.K. Michael for the Appellant.

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Dushyant Parashar, C.N. Sreekumar, G. Prakash and Ramesh Babu M.R. for the Respondents.

The Judgment of the Court was delivered by

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DR. MUKUNDAKAM SHARMA, J. 1. This appeal is directed against the judgment and order dated 28.10.2002 passed by the Kerala High Court rejecting the petition filed by the appellant herein praying for quashing of the first information report (for short 'the FIR') and the charge sheet filed against him.

2. The Respondent No. 2 (Valsa) got married with the appellant on 23.10.1997. Even otherwise they are related to each other, the Respondent No. 2 being the daughter of the appellant's maternal uncle and paternal aunt. Incidentally, the aforesaid marriage was the second marriage of Respondent No. 2 as she was earlier married to one Mr. Varghese, who died in the year 1995. Through the said marriage the Respondent No. 2 has two sons. However, it was the first marriage of the appellant. Out of the wedlock between the appellant and Respondent No. 2, there is no issue.

3. The appellant was working at the relevant time at Saudi Arabia. The appellant got married to Respondent No. 2 when he came on leave for four months. However, after the marriage there appears to be some dispute between the parties. On 21.04.2002, Respondent No. 2 filed an FIR in the Kottayam Police Station, District Kollam, Kerala alleging that the appellant married her when he came on leave for 4 months and that after the marriage he stayed in the house of the complainant – wife and that after expiry of the period of leave, her husband – the appellant returned to the Gulf. It was also alleged by Respondent No. 2 in the said FIR that thereafter, for 2-3 months, the appellant used to send money for the expenses in the house, talked to her over phone and also sent letters from Saudi Arabia and also behaved with her very affectionately. It was also alleged that the parents of Respondent No. 2 at the time of marriage had given Rs. 5 lakhs and that the said money was utilized by the family of the appellant for purchasing a house at Nediyazhikam and also a property at Mukkam where they are residing. It was also alleged that thereafter they started

A spreading wrong information regarding the conduct of the Respondent No. 2 in the locality and also misled the appellant about her. On believing his family members, the appellant also stopped sending money from Saudi Arabia for her expenses and also stopped sending letters to her. It was also alleged by B the Respondent No. 2 in the said FIR that when she called him on telephone, the appellant behaved without affection towards her and disconnected the phone due to which she became mentally weak. It was also alleged that subsequently whenever the appellant came on leave, he never used to come to the C house of Respondent No. 2 and stayed in the house of his younger brother and when Respondent No. 2 herself went to that house, she was turned out from that house. It was also alleged that due to such treatment meted out to her, she has been suffering both mentally and physically.

D 4. On the basis of the said FIR a criminal case was registered and on completion of the investigation made by the police, a charge sheet was submitted by the police alleging, inter alia, that in the investigation it is established that it is only the appellant, who has committed the offence. It was also stated E in the said charge sheet that investigation as per Section 498A of the Indian Penal Code (in short "the IPC") is being continued after dropping the provision of Section 34 IPC since it was revealed that no offence was committed by any of the family members of the appellant under Section 34 IPC. It was also F stated in the charge sheet that since the appellant has been in Gulf, arrest could not be made and therefore police requested the court to issue a warrant of arrest for production of the accused-appellant.

G 5. Both the FIR and the charge sheet, which were submitted by the police, became the bone of contention so far as the appellant is concerned, and therefore, he filed a Criminal Miscellaneous Case No. 9376 of 2002 under Section 482 of the Criminal Procedure Code (in short "the CrPC) before the High Court of Kerala at Ernakulam praying for quashing of both

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the FIR as also the charge sheet on the ground that no case for prosecution under Section 498 A IPC is made out against him. The High Court, however, without issuing any notice on the said petition rejected the petition holding that by no stretch of imagination it can be said that the FIR and the charge sheet do not disclose the commission of the offence alleged against the appellant.

6. Being aggrieved by the said order passed by the learned Single Judge of the High Court, the present appeal was filed on which notice was issued and further proceedings before the trial court were stayed by this Court.

7. Now, the appeal is listed before us for hearing and we heard the learned counsels appearing for the parties. In order to fairly appreciate the contents of the submissions made by the counsel appearing for the parties, it is necessary to extract relevant portion of the FIR and the charge sheet.

8. The relevant part of the FIR is as under:

".....On last 23rd October, 1997, Shakson Belthissor of Nediyazhikam House, Mukkam, Mayyanad married me at the Iyyathu Church at Kollam in accordance with the religious rites and custom. Husband is called by the name Raju. Husband has been working in Saudi Arabia as Business Executive. He married me at the time when he came on leave for 4 months. After the marriage, after wedded life had been in my house. On expiry of the period of leave, husband returned to Gulf. Thereafter, for 2-3 months, it was used to send money for the expenses in the house, to talk over phone, to send letters and to behave with very affection towards me. At the time of the marriage, my parents had given Rs. 5 lakhs as dowry. Using that amount with the consent of husband, Jose Major (younger brother of husband), wife Jessilet Manoj, their mother Jain Franco purchased Nediyazhikam house and property at Mukkam and resided therein. Thereafter, they spread in

A the locality unnecessary matters regarding me and informed husband and misled him. Husband, who believed their words, later stopped sending money for my expenses or sending letters. When I called him over phone, he would behave without affection towards me and cut off the phone. B Due to this behaviour from the part of husband and the aforesaid relatives, I was mentally weakened. While being so, husband came back on leave. Without coming to my house, went to the house of the younger brother. Learning about it, I went to there. Then, the younger brother, wife and C wife's mother closed the door of the house after sending me out. From that event and onwards, I had been suffering from physical and mental torturing..."

Relevant part of the charge sheet is as under:

D "... While leading family life in Vivek Bhawan having number 11 in Ward VII along the west side of the Panchayath Road going from Cheriyil Pullichira Post Office Junction towards Devalakuzhi and other places, the accused spent off some amount from the Rs 5 lakhs which E had been given as dowry at the time of marriage and after buying property with the balance amount he left for Gulf, and thereafter without giving for the maintenance of the witness No. 1 or looking after the family affairs, the witness No. 1 was tortured through letters and over phone and when F he came on leave, he spread unnecessary matter about the witness No. 1 and tortured mentally and thus committed the offence under the above provision – regarding."

Report

G .....On getting it revealed during the investigation of the case that only the accused No. 1 has committed the offence, report has been submitted before the Court for reducing the number from 2 to 4 regarding the identification of the full name and address of the accused H No. 1.

Report has been submitted before the Court regarding continuation of the investigation as per Section 498A IPC after reducing Section 34 IPC, since it was revealed that no offence was committed under Section 34 IPC. A

Since the accused in this case has been in Gulf, arrest could not be made and the Hon'ble Court may be pleased to issue warrant to arrest and produce the accused." B

9. The scope and power of quashing a first information report and charge sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down. C D E

10. In *Nagawwa v. Veeranna Shivalingappa Konjalgi,* (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations made in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5) F

"*(1)* Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused; G H

A *(2)* Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

B *(3)* Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

C *(4)* Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

11. In the case of *Drugs Inspector v. Dr. B.K. Krishna* [1981 (2) SCC 454] it was held by this Court that in a quashing D proceeding, the High Court has to see whether the allegations made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence. In the said decision this Court refused the prayer for quashing of the complaint on the ground that there were sufficient allegations in the complaint to make out a case that E the accused persons were responsible for the management and conduct of the firm and, therefore, the extent of their liability could be and should be established during trial.

12. In *Municipal Corporation of Delhi v. Ram Kishan* F *Rohtagi* [1983 (1) SCC 1] it was held that when on the allegation made in the complaint, a clear case was made out against all the respondents (accused persons), the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence. In *Municipal* G *Corporation of Delhi* (supra), this Court observed as follows in para 8:

"**8.** Another important consideration which is to be kept in mind is as to when the High Court acting under the H provisions of Section 482 should exercise the inherent

power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt Nagawwa v. Veeranna Shivalingappa Konjalgi,* (1976) 3 SCC 736 where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC para 5, p. 741 : SCC (Cri) pp. 511-12]

Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence, which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

A 13. In *State of Haryana v. Bhajan Lal,* 1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. B Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where the allegations made in the FIR or complaint C 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. It observed as follows in para 102:

D **"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 E 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 F 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.

G (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.

H (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. A

(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. B

(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. C

(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. D

(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. E F

(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." G

14. However, in paragraph 108 of the said judgment, this H

A Court referred to and relied upon it earlier judgment in *Sheonandan Paswan vs. State of Bihar*; AIR SC 877 wherein it has been held as under:

> "It is a well established proposition of law that a criminal
> B prosecution, it otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

Thus, in such circumstances, the issue of malafice
C becomes irrelevant.

15. The above decision was followed by this Court in *Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Others* [1998 (5) SCC 749]. In paragraph 28 of the said
D judgment this Court held thus :

> **"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
> E 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
> F 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.
> G 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
> H any of the accused."

16. Further, this Court observed in *S. W. Palanikar v. State of Bihar* [2002 (1) SCC 241] that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. It observed as follows:

> Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.
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> **9.** The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.
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> **10.** The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A **11.** One of us (D.P. Mohapatra, J.), speaking for the Bench, in *Hridaya Ranjan Prasad Verma v. State of Bihar,* (2000) 4 SCC 168 on facts of that case, has expressed thus: (SCC p. 177, para 15)

B **15.** In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this
C subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence.
D To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be
E presumed."

(emphasis supplied)

17. This Court in the case of *Indian Oil Corpn. v. NEPC India Ltd.,* (2006) 6 SCC 736, at page 747 has observed as
F under :

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated
G and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro*
H *Industries Ltd., State of Bihar v. Rajendra Agrawalla,*

Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

18. This Court has recently in *R. Kalyani v. Janak C. Mehta and Others,* (2009) 1 SCC 516, observed as follows:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

19. The same view has been taken by this Court in *Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr.*, SLP (Crl.) No. 2991 of 2007; and *V. V. S. Rama Sharma & Ors. v. State of U.P. & Ors.*, SLP (Crl.) No. 1529 of 2007.

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

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

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

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

A means-

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

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

21. In the light of the aforesaid language used in the Section, the provision would be applicable only to such a case where the husband or the relative of the husband of a woman
D subjects the said woman to cruelty. When the ingredients of the aforesaid Section are present in a particular case, in that event the person concerned against whom the offence is alleged would be tried in accordance with law in a trial instituted against him and if found guilty the accused would be punished with
E imprisonment for a term which may extend to three years and shall also be liable to fine. The said section contains an explanation, which defines "cruelty" as understood under Section 498A IPC. In order to understand the meaning of the expression 'cruelty' as envisaged under Section 498A, there
F must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman.

22. When we examine the facts of the present case
G particularly the FIR and the charge sheet we find that there is no such allegation either in the FIR or in the charge sheet making out a prima facie case as narrated under explanation (a). There is no allegation that there is any such conduct on the part of the appellant which could be said to be amounting to
H cruelty of such a nature as is likely to cause the Respondent

No. 2 to commit suicide or to cause any injury to her life. The ingredient to constitute an offence under explanation (a) of Section 498A IPC are not at all mentioned either in FIR or in charge sheet and in absence thereof, no case is made out. Therefore, explanation (a) as found in Section 498A IPC is clearly not attracted in the present case. A B

23. We, therefore, now proceed to examine as to whether the case would fall under explanation (b) of Section 498A of IPC constituting cruelty of the nature as mentioned in explanation (b). In order to constitute cruelty under the said provision there has to be harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand. When the allegation made in the FIR and charge sheet is examined in the present case in the light of the aforesaid provision, we find that no prima facie case even under the aforesaid provision is made out to attract a case of cruelty. C D

24. The marriage between the appellant and Respondent No. 2 was performed on 23.10.1997 when it is alleged that Rs. 5 lakhs was given by the parents of Respondent No. 2 to the family of appellant as dowry. The FIR was filed in the month of April, 2002 and in the said FIR there is no allegation that subsequent thereto any harassment was made by the appellant with a view to coercing her or any person related to Respondent No. 2 to meet any unlawful demand or any property. E F

25. In that view of the matter neither explanation (a) nor explanation (b) of Section 498 A of IPC is attracted in the present case. It is crystal clear that neither in the FIR nor in the charge sheet there is any ingredient of Section 498A IPC, which could prima facie constitute a case of cruelty as defined in that Section. G

26. It is thus established that on a reading of the FIR as H

A also the charge sheet filed against the appellant no case under Section 498A is made out on the face of the record, and therefore, both the FIR as also the charge sheet are liable to be quashed in exercise of the powers under Section 482 of the CrPC. Clearly, the High Court failed to appreciate the facts in B proper perspective, and therefore, committed an error on the face of the record.

27. We, therefore, allow this appeal and quash the proceedings initiated against the appellant under Section 498A of the IPC.

C

28. The appeal is allowed to the aforesaid extent.

N.J. Appeal allowed.