

**HIGH COURT OF RAJASTHAN****Bench: Hon'ble Mr. Justice Sudesh Bansal****Date of Decision: 24<sup>th</sup> April 2024**

S.B. Criminal Miscellaneous (Petition) No. 1424/2007 and No. 1425/2007

- **Bhagwan Sahay**
- **Smt. Keshar Devi**
- **Geeta D/o Bhagwan Sahay** .....**Petitioners**

**Versus**

- **State of Rajasthan through PP**
- **Sugna D/o Shri Gopal** .... **Respondents**

**Legislation and Rules:**

Sections 498-A, 323, 406 of the Indian Penal Code (IPC)

Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Section 397 Cr.P.C.

Section 13 of the Hindu Marriage Act

Section 9 of the Hindu Marriage Act

**Subject:** Petitions for quashing of criminal charges related to marital cruelty and dowry demands, framed against the in-laws and sister-in-law of the complainant.

**Headnotes:**

Criminal Law – Quashing of Charges – Section 482 Cr.P.C. invoked for quashing the charges framed against the petitioners under Sections 498-A and 323 IPC for alleged dowry harassment – Background involves the marriage of non-petitioner No.2 with Suresh Kumar Naranja and subsequent

accusations of cruelty and dowry harassment by her in-laws and sister-in-law – Charges of 406 IPC already dismissed by the trial court – High Court, upon examination, finds allegations to be nonspecific, overly delayed (over nine years post-marriage), and unsupported by credible evidence, indicating potential abuse of process and unnecessary harassment of the petitioners – Trial court’s order framing charges deemed excessive and unsustainable by the evidence, leading to quashing of charges against the petitioners [Paras 1-27].

Role of Accused – Analysis – High Court finds no specific evidence supporting active participation or direct actions by petitioners in dowry harassment or cruelty – The connection of petitioners to alleged crimes deemed overly assumptive based on familial ties rather than concrete actions or evidence – Acknowledges separate living arrangements and lack of direct involvement of petitioners in day-to-day life of the complainant [Paras 18-25].

Decision – Quashing of Charges and Dropping of Proceedings – High Court quashes the charges against the petitioners under Sections 498-A and 323 IPC, citing lack of substantive evidence and potential for justice abuse – Criminal proceedings against petitioners in relation to the said charges are dropped; proceedings against the husband to continue independently [Paras 26-31].

#### **Referred Cases:**

- Dhariwal Tobacco Products Limited and Ors. Vs. State of Maharashtra and Anr. [(2009) 2 SCC 370]
- Amit Kapoor Vs. Ramesh Chander [(2012) 9 SCC 460]
- Geeta Mehrotra and Anr. Vs. State of Uttar Pradesh and Anr. [(2012) 10 SCC 741]
- Preeti Gupta Vs. State of Jharkhand (AIR 2010 SCC 3363)
- Manendra Prasad Tiwari Vs. Amit Kumar Tiwari [(2022) SCC online SC 1057]
- Abhishek Vs. State of Madhya Pradesh [(2023) LiveLaw (SC) 731]
- Iqbal and others Vs. State of U.P. and others [(2023) 8 SCC 734]

Representing Advocates:

For Petitioner: Kapil Parkash Mathur

For Respondents: Suresh Kumar

1. Parents-in-law of non-petitioner No.2 have filed Criminal Miscellaneous Petition No. 1424/2007 and sister-in-law of nonpetitioner No.2 has filed Criminal Miscellaneous Petition No.1425/2007, invoking jurisdiction of High Court under Section 482 Cr.P.C, for quashing the order of charges framed against petitioners for offences under Section 498-A and 323 IPC vide order dated 13.08.2007 passed by the Additional Chief Judicial Magistrate, Chomu, District Jaipur in Criminal Case No.1244/2005, titled as State Vs. Bhagwan Sahay and Ors., and consequently to drop proceedings of present criminal case qua petitioners which have arisen out of FIR No.175/2005 registered at Police Station Samod on 14.10.2005 District Jaipur for offences under Sections 498-A, 406 and 323 IPC.
2. It is noteworthy that as per the latest status report dated 05.04.2024, sent by the trial Court in the present criminal case, no proceedings against petitioners have commenced, after framing of charges as interim stay on further proceedings is operating in favour of petitioners. As far as husband of non-petitioner No.2 is concerned, the order of charge for offences under Section 498-A and 323 IPC framed against him, is not under challenge, hence, proceedings against the husband are in progress, and after conclusion of prosecution evidence, examination of accusedhusband under Section 313 Cr.P.C. before the trial Court has been held, and at the present criminal case is pending at the stage of his defence evidence.
3. It is also worthy to take note of subsequent facts which have arisen after passing the impugned order and have come on record that on filing a divorce petition by husband Suresh Kumar Naranja, his marriage with non-petitioner No.2 solemnized on 02.05.1996, has been ordered to be dissolved and a decree of divorce has been passed by the Family Court No.3, Jaipur vide judgment dated 19.01.2019 under Section 13 of the Hindu Marriage Act on grounds of cruelty and desertion against non-petitioner No.2. Nonpetitioner No.2 filed separate application under Section 9 of the Hindu Marriage Act, but the same has been rejected by the Family Court vide same judgment. It is to be noted that during course of trial of such proceedings, non-petitioner No.2 deposed her evidence before the Family Court wherein she admitted in her cross-examination that dowry was demanded from her after five years of marriage and by that time she had given birth to a baby child. She admitted that marriage of her younger sister was fixed for 12.10.2005 and she came to

residence of her parents, to attend the marriage of her younger sister on 10.10.2005; and she was dropped by her husband happily. She admitted that after solemnization of marriage of younger sister, her father lodged the FIR against her husband, father-in-law, mother-in-law and sister-in-law on 14.10.2005.

The Family Court, in the judgment dated 19.01.2019 has taken note of such facts that husband of non-petitioner No.2 dropped her along with minor daughter on 03.09.2005, nearby to her parents' home, to attend the marriage of her younger sister which was fixed for 12.10.2005, but thereafter, FIR was lodged against husband, parents-in-law and sister-in-law for offences under Section 498-A, 406 and 323 IPC.

4. It is also noteworthy that although after investigation in FIR No.175/2005, police filed charge-sheet for offences under Section 498-A, 406 and 323 IPC, but the trial Court noticed that there is no prima facie evidence to prosecute accused persons for offence under Section 406 IPC, therefore, charges have been framed only for offences under Sections 498-A and 323 IPC and against father-in-law charge is framed only for the offence under Section 498-A IPC and no charge for offence under Section 406 IPC has been framed. It appears that to the extent of discharging the petitioner for offence under Section 406 IPC, the order has attained finality.
5. After inviting attention of Court to the subsequent events, it has been argued that the impugned order of framing charge for offences under Sections 498-A and 323 IPC against petitioners is ex-facie illegal and in pursuance thereof, if petitioners are compelled, to face criminal trial, same would amount to abuse of process of law. He would argue that on appreciation of the entire attending facts and circumstances as well as the subsequent facts of this case and taking all facts and evidence on their face value as they are, it would be in the interests of justice to drop the criminal proceedings in the present case qua petitioners.
6. It has been contended by counsel for petitioners that in the present FIR there is no specific allegation against petitioners, however, they have been implicated only on account of being in relationship of non-petitioner No.2, as father-in-law, mother-in-law and sister-in-law; in fact the non-petitioner No.2 after her marriage, had started to live separately from petitioners, with her husband since year 2000 onwards and at the time of FIR, was living at another residence. In the family ration card of petitioners, name of non-petitioner No.2, and her husband is not included; in addition, from the FIR also, it is clear that non-petitioner No.2 has shown her address of house No.5,

Khatik ka Mohala, Chipa Ki Gali, Sanganer, whereas petitioners reside in House No.5, Lila Shah Colony, Higher Secondary Road, Sanganer; it has been contended that allegations leveled in the FIR like demanding one lakh rupees and a Maruti car, are general in nature; allegations to assault nonpetitioner No.2 by petitioners on 12.10.2005 and to stick hot electric press to her body are not substantiated by any other evidence; allegations in respect of misappropriation of her Stridhan/ Dowry articles by petitioners has already been turned down by the trial Court. Therefore, the implication of petitioners in the present criminal case is wholly frivolous and mala fide as much as, without any prima facie evidence, but just to harass the petitioners or for wreaking vengeance or to satisfy personal grudge against them their names have been included with husband.

7. Finally, it has been prayed by the counsel for petitioners that having considered the peculiar facts and circumstances of the present case holistically, impugned order of charge and criminal proceedings against petitioners are liable to be dropped by the High Court in exercise of its inherent powers under Section 482 Cr.P.C in order to render ex debito justitiae i.e. to do real and substantial justice and allowing to proceed criminal trial against petitioners would be unwarranted as well as an abuse of the process of the Court.
8. No one has turned up for and on behalf of non-petitioner No.2, despite service of notices for hearing of these petitions after admission.
9. Learned Public Prosecutor has opposed petitions, however, could not controvert the aforesaid factual aspects including occurrence of subsequent facts as narrated hereinabove.
10. Heard. Considered.
11. At the outset, this Court is aware that petitioners could have and ought to have challenged the impugned order of framing charges for offences under Section 498-A and 323 IPC by way of filing revision petition under Section 397 Cr.P.C. before the Session Court, but instead petitioners have opted to file these petitions invoking jurisdiction of High Court under Section 482 Cr.P.C. Both petitions have been filed way back in the year 2007 and show cause notices were issued to non-petitioner No.2. After service of notice, non-petitioner No.2 turned up through counsel, but record shows that no objection in respect of not availing the alternative remedy of revision by petitioners was ever raised, thereafter petitions have been admitted for hearing. After service of notices for hearing, no one has turned up on behalf of non-petitioner No.2. From the side of petitioners, apart from praying to quash the impugned order

of charges, a consequential prayer has also been made to drop the criminal proceedings in the present criminal case qua petitioners, more particularly in the light of subsequent facts transpired between parties during course of these petitions. Therefore, apart from considering the impugned order of framing charge, the issue has also fallen for consideration as to whether in given facts and circumstances of the present case, criminal proceedings against petitioners on the behest of non-petitioner No.2 may be allowed to proceed or whether quashing of criminal proceedings of present criminal case qua petitioners would otherwise serve the ends of justice?

Thus, this Court is of opinion that in such peculiar facts and circumstances of the present case, it would not be just and proper to not consider the petitions on merits and relieving the petitioners to avail remedy of revision petition before the Sessions Court first, that too after expiry of about more than sixteen years, and after admitting these petitions for hearing, rather same would result in injustice, if these petitions are not considered and decided on merits. Otherwise also mere availability of alternative remedy of filing under Section 397 Cr.P.C., could not be a ground to dismiss the petition under Section 482 Cr.P.C. without considering on merits as has been held by the Apex Court in case of **Dhariwal Tobacco Products Limited and Ors. Vs. State of Maharashtra and Anr. [(2009) 2 SCC 370]** In that case, while considering the wide magnitude of the inherent powers of the High Court, which has been recognized and saved by virtue of Section 482 Cr.P.C., Hon'ble Supreme Court noticed the observations made in case of **CBI Vs. Ravi Shankar Srivastava reported in [(2006) 7 SCC 188]** which are as under :-

“7. Exercise of power under Section 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, conceder 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."

(emphasis supplied)

Hence, instead of relieving the petitioners to avail alternative remedy before the sessions Court, both petitions are being decided on merits.

12. In order to consider and decide both petitions on merits, it is desirable to look into facts of the present criminal case in brief. The facts of case as culled out from the record are that nonpetitioner No.2 entered into marriage with one Suresh Kumar Narania on 02.05.1996 and out of such wedlock non-petitioner No.2 gave birth to a baby child on 07.02.2001. Suresh Kumar is son of petitioners Bhagwan Sahay and Smt. Keshar Devi and brother of petitioner Geeta, thus petitioners Bhagwan Sahay and Keshar Devi are parents-in-law and petitioner Geeta is sister-inlaw of non-petitioner No.2. Father of non-

petitioner No.2 Mr. Gopal Khatik lodged a FIR on 14.10.2005 before the Police Station Samod, District Jaipur stating inter alia that he gave dowry in marriage of his daughter as per demand of her in-laws family, but after marriage, his daughter's-in-laws started harassing her for dowry and put repeated demands for a Maruti Car and to pay one lakh rupees cash. It is alleged in the FIR that about ten days ago, she was beaten up mercilessly and hot electric press was stuck on her hand and neck, thereafter they left her daughter at Udaipuriya Mod on 12.10.2005 and asked not to return matrimonial home without getting Maruti Car and one lakh rupees cash. It is also alleged in the FIR that daughter's-in-laws, subjected his daughter as well as her daughter, who is minor girl of four years, to cruelty in manifold manner as usually both were kept starving, and even wearing clothes were not made available to them. It was prayed in the FIR, that legal action be taken against accused persons and dowry articles which were given in the marriage of his daughter be recovered from accused persons.

13. From perusal of FIR, it is clear that FIR has been lodged after expiry of about nine years of marriage and general allegations for subjecting the non-petitioner No.2 to cruelty for demand of a Maruti Car and one lakh rupees cash, have been made therein. Further, apart from the husband of non-petitioner No.2, namely Suresh Kumar, her father-in-law, mother-in-law and unmarried sister-in-law (petitioners herein) have also been named in the FIR, though no specific role of any of petitioners has been indicated in the FIR.

14. After investigation in the FIR, Police submitted charge-sheet for offences under Sections 498-A, 406 and 323 IPC against husband, father-in-law, mother-in-law and sister-in-law of nonpetitioner No.2, however, while framing charges, the trial Court in the order dated 13.08.2007 clearly observed that essential elements to make out a prima facie case for offence under Section 406 IPC are absent in the FIR, as also in investigation report, therefore, no charge for offences under Section 406 IPC was framed, however, the trial Court framed charges for offence under Section 498-A IPC against all four accused, and charge for offence under Section 323 IPC against the husband, mother-in-law and sister-in-law. Father-in-law was absolved from the charge for offence under Section 323 IPC.

15. Legal position is well settled that at the stage of charge, the Court is required to evaluate the material and documents available on record with a view to find out facts emerging there from taken at their face value, disclose the existence of all essential ingredients constituting alleged offences. Although, at such stage, the Court is not expected to go deep into the



probative value of the material on record and the Court is not required to appreciate evidence on the parameters that the material available on record is sufficient or not for convicting the accused, however, it is desirable that at least a prima facie case should be made out to have a strong suspicion about involvement of accused persons for commission of alleged offences and existence of essential elements to constitute offences for which charge is to be framed must be reflected from the material on record.

16. The Hon'ble Supreme Court in case of **Amit Kapoor Vs. Ramesh Chander [(2012) 9 SCC 460]** while dealing with the jurisdiction of High Court to quash the charge or quashment of the proceedings, have delineated some of the principles, for proper exercise of jurisdiction, particularly with regard to quashing of charge either under Section 397 or Section 482 Cr.P.C. In para No.

27, relevant principles are mentioned, which are being extracted hereunder:-

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.”

17. The broad principles as expounded by Apex Court in case of **Amit Kapoor** (Supra) have been followed and reiterated by the Hon’ble Supreme Court recently in case of **Manendra Prasad Tiwari Vs. Amit Kumar Tiwari [(2022) SCC online SC 1057]** decided on 12.08.2022, wherein the decision of High Court, quashing charge for offences under Section 376 IPC and Section 5/6 of Protection of Children From Sexual Offences Act, 2012 in exercise of revisional Court jurisdiction has been set aside, however, it has been held it is open to a High Court to entertain a petition under Section 482 Cr.P.C. or a revision application under Section 397 Cr.P.C., to quash charges framed by the trial Court, yet the same cannot be done by weighing correctness or sufficiency of the evidence. It has been observed that High Court should not interfere with the order of framing charge unless there are strong reasons to hold that in the interest of justice and to avoid any abuse of process of the Court, the charge framed against accused needs to be quashed.

18. In the present case, allegations against petitioners are nonspecific and are only general in nature, in respect of harassing non-petitioner No.2 for demand of dowry, more particularly for bringing a Maruti Car and one lakh rupees cash from her parents. There is no iota of evidence against any of petitioners to stick electric iron press on the body of non-petitioner No.2 or to commit any manhandling with her within a period of nine years after marriage. Bare and casual, allegations against mother-in-law to misbehave and maltreat non-petitioner No.2, do not attract the cruelty as defined under Section 498-A IPC. From the contents of FIR itself, prima facie it stands clear that non-petitioner No.2 was residing at a different home, separate from the residence of petitioners. The address of non-petitioner No.2 and address of petitioners, as mentioned in FIR, are altogether different and located at far distance with each other. Petitioners have also placed on record the copy of ration card, to show that nonpetitioner No.2 and her husband, it means the son and brother of petitioners, is not included as joint family member in their ration card. The ration card is not a disputed document. Thus, as far as petitioners are concerned, whatever general allegations have been leveled

against them are frivolous on their face value and there is no basis of such allegations, however, trial Court has proceeded to frame charge for offences under Sections 498-A and 323 IPC against father-in-law, mother-in-law and sister-in-law as well. Although, petitioners have been discharged from offence under Section 406 IPC, nonetheless, considering delay of more than nine years, non-specific allegations, separate living of non-petitioner No.2, and frivolity of the general allegations due to being without any support of reliable evidence, petitioners could be discharged from offences under Sections 498-A and 323 IPC, but the trial Court acted in excess of jurisdiction, by making a meticulous analysis of statements of witnesses and thereby committed jurisdictional error in framing charges against petitioners, along with the husband of non-petitioner No.2. The charges framed against the husband are not under challenge.

19. In case of **Geeta Mehrotra and Anr. Vs. State of Uttar Pradesh and Anr. [(2012) 10 SCC 741]** the Hon'ble Supreme Court observed that mere casual reference of names of family members of husband in a matrimonial dispute without allegations of active involvement in the matter, would not be justified for taking cognizance against them overlooking the fact born out of experience, that there is a tendency to involve the entire family members of the husband in the domestic quarrel taking place in matrimonial dispute, specially when it happens soon after the marriage. In that case the Hon'ble Supreme Court extended weigh

to the ex parte decree of divorce, obtained by wife after initiating the criminal proceeding under Section 498-A IPC against the husband and in-laws of family. It was finally held that in absence of specific allegations against brother and sister-in-law and after obtaining an ex parte decree of divorce by wife, continuing the criminal proceeding for offences under Section 498-A IPC against them, would be amounted to abuse of process of Court.

20. In case of **Preeti Gupta Vs. State of Jharkhand (AIR 2010 SCC 3363)** married sister-in-law and unmarried brother-in-law who were living separately from the place of residence of complainant, approached before the Hon'ble Supreme Court seeking to quash the complaint and proceedings registered for offence under Section 498-A IPC. After considering the entire stock of events and facts, Hon'ble Supreme Court observed that the implication of sister-in-law and brother-in-law seems to be just to harass and humiliate them, therefore, permitting complainant to pursue the complaint, against them was held an abuse of process of law. The Hon'ble Supreme Court shown its concern over the issue of over implication of husband's

relatives in the matrimonial dispute and more particularly in criminal cases filed under Section 498-A IPC. It was held that “the allegations of harassment of husband’s close relatives, who had been living in different cities and never visited or rarely visited the place where the complainant resided, would have an entirely different complexion. The allegations made by complainant to involve relatives of husband in a matrimonial dispute, should be scrutinized with great care and circumspection.” The Hon’ble Supreme Court noticed that there has been a tendency of over implication in a very large number of cases related to matrimonial dispute.

21. Recently, the Hon’ble Supreme Court in case of **Abhishek Vs. State of Madhya Pradesh [(2023) LiveLaw (SC) 731]**, discussed the contours of the power of High Court to quash criminal proceedings in exercise of jurisdiction under Section 482 Cr.P.C. In that case criminal proceedings in FIR registered for offence under Section 498-A IPC and Section 3/4 of the Dowry Prohibition Act, 1961 were quashed against family members of husband including mother-in-law and sister-in-law.

22. The Hon’ble Supreme Court recently in case of **Iqbal and others Vs. State of U.P. and others [(2023) 8 SCC 734]** held that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly, frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely.

It was further observed that it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, try to read in between the lines.

(emphasis supplied) 23.

From facts of the present case, as available on record, it is undisputed fact that FIR has been registered on 14.10.2005 after more than nine years from the date of marriage, solemnized on 02.05.1996; according to address mentioned in the FIR, nonpetitioner No.2 was residing at different place, separately from petitioners. Names of petitioners alongwith husband have

been given in the FIR, subjecting non-petitioner No.2 to cruelty levelling very common and usual allegations like for making demand of a Maruti car and one lakh rupees cash, to maltreat and misbehave non-petitioner No.2 at her in-laws home. A case against petitioners has been tried to make out that they were harassing non-petitioners No.2 for demand of dowry since after marriage. It has come on record that after lodging the FIR, husband of nonpetitioner No.2 instituted divorce petition under Section 13 of the Hindu Marriage Act before the Family Court on 29.03.2011, on the ground of cruelty and desertion against non-petitioner No.2. In counter, non-petitioner No.2 filed petition under Section 9 of the Hindu Marriage Act in the year 2012. In both petitions, a joint trial was commenced and both parties adduced their evidence before the Family Court. The Family Court decided both petitions on merits vide common judgment dated 19.01.2019 and ordered to dissolve the marriage and petition of non-petitioner No.2 filed under Section 9 of Hindu Marriage Act was dismissed.

24. The proceedings commenced between non-petitioner no.2 and her husband before the Family Court, are matter of record of judicial proceedings and cannot be disputed. In the judgment dated 19.01.2019, the Family Court has noted on appreciation of evidence of respective parties that non-petitioner No.2 was residing with her husband in a rented house from where, her husband left non-petitioner No.2 on 03.09.2005 at the place of her parents in order to allow his wife to attend the marriage of her younger sister which was fixed for 12.10.2005. It may also be noted that during course of such proceedings, in the Court statements of non-petitioner No.2, during her cross-examination, she admitted that after solemnization of marriage of her younger sister, her father lodged the FIR against her husband, father-inlaw, mother-in-law and sister-in-law on 14.10.2005. Nonpetitioner No.2 admitted in her court statements before the Family Court that demand of dowry was made after five years of marriage and it has come on record that prior thereto, she had shifted to rented house with her husband and started to reside separately from petitioners. Separate residence of non-petitioner No.2 is apparently clear and can be taken as an undisputed fact from her address mentioned in the FIR after appreciation of the statements of non-petitioner No.2, allegations leveled in the FIR against petitioners for subjecting non-petitioner No.2 to cruelty for demand of dowry since soon after marriage, prima facie appear to be frivolous. Dragging the petitioners for offence under Section 498-A IPC, after nine years of marriage

- and on the basis of very common and general allegations cannot be appreciated.
25. In the opinion of this Court, involvement of petitioners in the present criminal case, can be termed as over implication and because of having a tendency to involve all family members of husband in case of Section 498-A IPC. Similarly, involvement of mother-in-law and sister-in-law for offence under Section 323 IPC also appears to be wholly baseless and this Court finds that the name of petitioners was indicated in the FIR just to harass them or with an ulterior motive for wreaking vengeance or to settle or personal grudge. Learned trial Court failed to consider these attending circumstances which are apparent on the record and in the opinion of this Court charges framed against petitioners are not sustainable and leads to miscarriage of justice, hence, warrant interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.
  26. It is, undoubtedly, well-established that the jurisdiction of High Court under Section 482 Cr.P.C. is of wide magnitude, however, such jurisdiction should be exercised with great care and caution, that too in exceptional circumstances, where need to exercise such jurisdiction warranted to prevent an abuse of process of the Court or to otherwise secure the ends of justice and to do real and substantial justice. The inherent jurisdiction should not normally be exercised to stifle a legitimate prosecution but can be exercised to prevent an unwarranted prosecution, if same is observed to be in abuse of process of law.
  27. Having considered the facts and circumstances prevailing in the present case as also after extending heed to all other attending circumstances, including the subsequent facts which are not in dispute, this Court finds that allowing to continue the criminal proceedings in the present criminal case for offences under Section 498-A and 323 IPC against petitioners would amount to abuse of process of Court, and therefore, in order to render *ex debito justitiae*, it means to do real and substantial justice, and in order to prevent an abuse of process of Court, the impugned order of framing charge against petitioners is hereby quashed, and consequentially, criminal proceedings against petitioners, of Criminal Case No.1244/2005 (new case No.140/2019) titled as State Vs. Bhagwan Sahay and Ors. pending before the Court of Civil Judge Judicial Magistrate, Chomu, District Jaipur are hereby ordered to be dropped but qua petitioners only. Accordingly, both petitions stand allowed.

28. However, it is made clear that proceedings of the present criminal case against the husband of non-petitioner No.2 shall remain continue and be concluded by the trial Court in accordance with law.
29. Let a copy of this Order be placed in the connected file.
30. Copy of this Order be forwarded to the trial Court forthwith for compliance.
31. Stay application and any other pending application(s), if any, stands disposed of.

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