

(2020) 06 GAU CK 0041
In the Gauhati High Court
Case No : Criminal Petition No. 551 Of 2012

Dhananjay Biswas And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 04-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 209, 227, 228, 239, 240, 397, 482
Indian Penal Code, 1860 — Section 34, 498A
Hindu Marriage Act, 1955 — Section 13B
Family Courts Act, 1984 — Section 7
Constitution Of India, 1950 — Article 226

Citation : (2020) 06 GAU CK 0041

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S Dutta, H R Choudhury

Final Decision : Allowed

Judgement

1. This criminal petition under Section 482, Code of Criminal Procedure, 1973 (â??the Codeâ?? and/or â??the CrPCâ??, for short) has been

preferred seeking quashing and setting aside of the criminal proceeding in G.R. Case no. 799/2010, presently pending before the Court of learned

Chief Judicial Magistrate, Bongaigaon (â??the trial courtâ??, for short), and the order dated 21.04.2012 passed by the learned trial court.

2. The two petitioners (hereinafter also referred to as â??the accused no. 1â?? and â??the accused no. 2â?? respectively, at places, for easy

reference) are facing criminal prosecution before the learned trial court for offences punishable under Sections 498A/34, Indian Penal Code (IPC).

The accused no. 1 is the son of the accused no. 2. By the order dated 21.04.2012, the learned trial court had framed charges against the accused

persons for the offences punishable under Sections 498A/34, IPC finding prima facie materials against them to proceed for trial. After framing the

charges, the charges were read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

3. The events which have led the petitioners to file this criminal petition invoking the inherent jurisdiction of this Court under Section 482 of the Code

can be exposited, in brief, as follows :

3.1. The criminal proceeding in G.R. Case no. 799/2010 has arisen out of a complaint filed by the respondent no. 2 (hereinafter also referred to as

the informant, at places, for easy reference) before the learned Chief Judicial Magistrate, Bongaigaon on 12.11.2010. On receipt of the

complaint, the complaint was registered as Complaint Case no. 247/2010. After such registration, the complaint was forwarded by the learned Chief

Judicial Magistrate, Bongaigaon under Section 156(3), CrPC to the Officer In-Charge, Bongaigaon Police Station for registration of a case and to

submit a report after investigation.

3.2. On receipt of the complaint, the Officer In-Charge, Bongaigaon Police Station treating the complaint as the First Information Report (FIR)

registered it as Bongaigaon Police Station Case no. 579/2010, on 14.11.2010, for offences under Sections 498A/34, IPC and the investigation was

initiated. Upon completion of investigation, the Investigating Officer of the case had submitted a charge sheet being Charge Sheet no. 120 dated

29.05.2011, finding sufficient materials to send the accused persons to face trial for the offences under Sections 498A/34, IPC. Thereafter, the

learned trial court by order dated 21.04.2012 had framed charges against the accused persons.

4. The case projected on behalf of the petitioners i.e. the accused persons in this criminal petition is that though the marriage between the accused no.

1 and the victim who is the sister of the informant (hereinafter referred to as the victim, for easy reference), was solemnised socially on

03.02.2009 but during the date of the marriage itself, vital differences between the two cropped up and they had decided not to live together as

husband and wife from thenceforth itself. In view of their not living together since the date of their marriage, the marriage was practically not

consummated. When the accused no. 1 and the victim found that they would not

be able to lead a conjugal life because of their differences in opinions, thoughts, approaches and thinkings, they decided to approach the Court of Principal Judge, Family Court, Kamrup, Guwahati (â??the family courtâ??, for short) on 20.02.2010 by way of a joint petition seeking dissolution of the marriage between them by a decree of divorce on mutual consent. They had also preferred an application for passing the decree of divorce on mutual consent by waiving the period of 6 (six) months required under the statute.

4.1. The learned family court had found that though their marriage was solemnised socially but they did not live together as husband and wife for a single day due to irreconcilable differences between them since the date of their marriage. Observing that the marriage was completely broken down and there was no scope of reunion, the learned family court by its order dated 20.08.2010 had dissolved the marriage between the accused no. 1 and the victim by a decree of divorce on mutual consent. The decree was accordingly prepared on 05.10.2010.

4.2. It was thereafter the complaint was filed by the informant before the learned Chief Judicial Magistrate, Bongaigaon on 12.11.2010 and Bongaigaon Police Station Case no. 579/2010 was registered on 14.11.2010. In the FIR so lodged, the informant had stated that the victim was treated with cruelty by the accused no. 1 and the accused no. 2 since after 3 (three) months from their marriage and also on 02.11.2010, 10.11.2010 and 11.11.2010.

5. Heard Mr. A. Das, learned counsel for the petitioners; Ms. S. Jahan, learned Additional Public Prosecutor for respondent no. 1, State of Assam; and Mr. M.U. Mahmud, learned counsel for the respondent no. 2.

6. Mr. Das, learned counsel for the petitioner has submitted that the said complaint/FIR was instituted after about 3 (three) months from the dissolution of the marriage between the accused no. 1 and the victim on 20.08.2010 only with the sole intention to cause harassment and to wreak vengeance on the accused persons. The informant had suppressed the vital fact that the learned family court had already dissolved the marriage between the accused no. 1 and the victim. He has further submitted that if the contents of the FIR are perused the incidents of alleged cruelty can be categorized into two parts. One part of the incidents was alleged to have

occurred after 3 (three) months from the date of marriage and the second part of the incidents was alleged to have occurred after the divorce. When the criminal proceeding in G.R. Case no. 799/2010, arising out of Bongaigaon Police Station Case no. 579/2010, was challenged in a criminal petition, Criminal Petition no. 107/2011, before this Court earlier on the basis of the decree of divorce on mutual consent passed by the learned family court, this Court had disposed of the said criminal petition by an order dated 31.10.2011, granting the liberty to the accused persons to approach the trial court in view of the fact that the charge sheet in the case had already been submitted. When the accused persons appeared before the learned trial court and brought the order of the family court to the notice of the learned trial court at the stage of framing of charge, the learned trial court in view of the decisions of the Supreme Court in *Union of India vs. Prafulla Kumar Samal*, reported in (1979) 3 SCC 4, and *State of Orissa vs. Debendra Nath Padhi*, reported in (2005) 1 SCC 56,8 had declined the prayer primarily on two counts, firstly, in view of the limitations of the learned trial court to look into any other materials other than the record of the case and the documents submitted therewith, as contemplated under Section 227 and Section 239 of the Code, the trial court cannot look into the decree of divorce on mutual consent passed by the family court and secondly, there were prima facie materials in the record of the case against the accused persons to frame charges against them for offences under Sections 498A/34, IPC. In such view of the matter, Mr. Das submits that this Court in exercising its inherent jurisdiction conferred under Section 482, CrPC can definitely look into the documents submitted in the form of the order and decree of the learned family court dissolving the marriage on mutual consent which is otherwise of unimpeachable nature and to stop the criminal prosecution alleged against the accused persons which cannot be termed as a legitimate prosecution.

7. Opposing the submissions of Mr. Das, Mr. Mahmud has submitted that this Court cannot look into any other materials sought to be relied upon by the accused while exercising its jurisdiction under Section 482 of the Code when the trial Court had found sufficient materials against the accused persons to frame charges against them. The case projected on behalf of the accused persons can definitely be looked into by the trial court during the

course of the trial and it is after examination and evaluation of the entire evidence, the trial court would have to come to a conclusion as regards the guilt or otherwise of the accused persons. It would be premature for this Court to look into the order and decree of the family court, whereby, the marriage between the accused no. 1 and the victim was dissolved on mutual consent.

8. Ms. Jahan has submitted that if the contents of the joint petition and the final order of the family court are looked into, it cannot be said that there could have occurred an incident of cruelty. She has further submitted if in the investigation initiated pursuant to the lodgment of the FIR, sufficient materials had been found against the accused persons then definitely criminal prosecution can be continued and the accused persons can be proceeded against and the evaluation of the materials can be assessed only at the stage of trial.

9. I have heard the submission of the learned counsel for the parties and have also perused the materials available on record.

10. It is not in dispute between the parties that the marriage between the accused no. 1 and the victim was solemnised on 03.02.2009 socially at Bongaigaon as per Hindu rites and rituals.

11. Before proceeding further, it is necessary to note all relevant contents of the petition filed by the accused no. 1 and the victim jointly under Section 13B of the Hindu Marriage Act, 1955 read with Section 7 of the Family Court Act, 1984 before the family court seeking dissolution of their marriage by a decree of divorce on mutual consent and the same are extracted hereunder :-

â??3. That the petitioners got married on 03.02.2009 and their marriage was performed socially at Bongaigaon under Hindu rites and customs.

4. That due to some vital differences between the petitioners occurred during the day of marriage, they have decided not to live together as husband and wife and the marriage was not practically consummated.

5. That the petitioners as well as their relatives and well-wishers tried their level best to negotiate their differences and lead a normal happy conjugal life, but of no avail.

6. That inspite of several attempts made by the petitioners, they have not been able to lead their conjugal life due to their differences of opinion,

thoughts, approach and thinking and there has become a huge gap between the petitioners and ultimately their attempts to lead a conjugal life is of no fruitful results.

7. That the petitioners state that in this way their marital relationship has irretrievably broken down and decided to file this application with their own consent before this Honâ??ble Court with a prayer for dissolution of their marriage by passing an order of a decree of divorce on mutual consent.

8. That the marriage between the petitioners has not been consummated and there has no scope of reunion and no alternative is left for the petitioners except to approach before your Honâ??ble Court for a decree of divorce on mutual consent.

9. That the petition is filed on free will and consent of both the petitioners and there is no force, undue influence for filing this petition.

10. That the petitioners have no sort of claim against each other after passing a decree of divorce.

11. That the petition is filed bonafide in the interest of justice, equity and consequences.â??

12. The joint petition was filed on 20.02.2010. Another application was filed by the accused no. 1 and the victim jointly to waive the statutory period of

6 (six) months to pass the decree of divorce on mutual consent required under Section 13B of the Hindu Marriage Act, 1955 as there was no scope of

reunion between them and the marriage between them had already been broken down since the date of their marriage.

13. Thereafter the learned family court made efforts for conciliation. When the efforts of conciliation failed, the learned family court called for the

appearance of both the accused no. 1 and the victim before it on 20.08.2010. The learned family court heard both the sides and it found that there was

no scope for conciliation. The learned family court went on to record the evidence of the accused no. 1 and the victim. After hearing them and after

perusal of the joint petition filed by them, the learned family court had passed the final order dissolving the marriage between them on mutual consent

by an order dated 20.08.2010 and the relevant parts of the said order reads as under :

â??Their marriage was solemnized on 3.2.09 as per Hindu rites and rituals. Though their marriage was solemnized socially, but they could not live

together as husband and wife for a single day due to mal adjustment of habits, thoughts, tastes and temperament, so they have decided to live

separately since after the marriage in their respective parental house. Their marital relationship has not been consummated. Now, they have filed this

petition for dissolution of their marriage by a decree of divorce on mutual consent. Their marriage has been completely broken down and there is no

scope of reunion. They have no sort of demand against each other in future after passing a decree of divorce. The petition has been filed mutually out

of their free will and without any undue influence and there is no collusion between them.

In view of above, the prayer is allowed. The marriage between the petitioners is hereby dissolved by a decree of divorce on mutual consent. Prepare

a decree accordingly.â??

Thereafter, the decree was prepared on 05.10.2010.

14. Thereafter on 12.11.2010, the informant had filed the complaint wherein he made allegations of cruelty against the accused no. 1 and the accused

no. 2. In the said complaint/FIR, the informant had alleged that the victim and the accused no. 1 got married about 1½ years before and at the time

of the marriage, the accused no. 1 demanded articles as dowry. After the marriage, both of them had satisfactory married life in the residence of

accused no. 1 for about 3 (three) months. Thereafter, the accused no. 1 at the instigation of others asked the victim to bring dowry in the form of one

bike and Rs. 1,00,000/-. When the victim declined, she was assaulted and humiliated by the accused on a number of occasions. It is alleged that the

accused had sent back the victim to the house of the informant on a number of occasions to bring the bike and the money. Because of such demand

of dowry, the accused no. 1 did not maintain marital relation with the victim since 3 (three) months after the marriage. At the same time, the informant

has referred to 3 (three) incidents that occurred on 02.11.2010, 10.11.2010 and 11.11.2010 wherein he alleged that the victim had been treated with

cruelty by the accused no. 1 with the support of accused no. 2 on those occasions.

15. By seeking quashing of the criminal proceeding of G.R. Case no. 799/2010 in the aforesaid backdrop, the accused persons approached this Court

by criminal petition, Criminal Petition no. 107/2011. This Court had observed

that the marriage between the accused no. 1 and the victim was dissolved by mutual consent by an order of divorce dated 20.08.2010. On the other hand, the police after investigation had submitted a charge sheet and the charge sheet was not taken up for consideration by the trial court and no charges had been framed till then. Observing as above, this Court on 31.10.2011, had disposed of the criminal petition by allowing the accused persons to argue on the framing of charge before the trial court. In the event of framing of any charge, liberty was granted to the accused persons to approach the appropriate forum having jurisdiction, if they had any grievance. It is in such situation, the accused persons as the petitioners, have approached this Court after passing of the order dated 21.04.2012 by the learned trial court.

16. The events leading to the filing of this petition have already been delineated above. The learned trial court had declined to consider the materials placed on record by the accused persons in view of the decisions of the Supreme Court in Prafulla Kumar Samal (supra) and Debendra Nath Padhi (supra). Thus, it is apt to look into the principles laid down in those two decisions.

17. In Prafulla Kumar Samal (supra), the Supreme Court had examined the scope and ambit of an order of discharge to be passed by a Special Judge under Section 227 read with Section 228 of the Code. The power entrusted to a Special Judge is similar to the Sessions Judge under Section 227 of the Code. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex-facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

18. In Debendra Nath Pathi (supra), the Supreme Court has elaborated the meaning of the expression "the record of the case" contained in Section 227 of the Code. In that context, it has been explained that though the word 'case' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that

the offence is triable exclusively by the Court of Session, he shall commit 'the case' to the Court of Session and send to that court 'the record of the case' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

19. It has further been held in Debendra Nath Pathi (supra) that at the stage of 227, CrPC, there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial. At that stage, only the materials as produced by the prosecution alone are to be considered and not the ones produced by the accused. At the stage of framing of charge the defence of the accused cannot be put forth. The provision about hearing the submissions of the accused as postulated by Section 227 is to be understood as hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused. At the stage of framing of charge hearing the submissions of the accused has to be confined to the materials produced by the prosecution.

20. While referring to Sections 227 and 228, CrPC relating to Sessions triable cases, the three-Judge Bench also considered the provisions of Sections 239 and 240, CrPC relating to trial of warrant cases by Magistrates, which are almost identical to Sections 227 and 228, CrPC. A similar role is also to be attributed to a Magistrate at the stage of 239 of the Code. In view of the limitations imposed under Sections 227 and 228, CrPC and/or Section 239 and

240 of the Code and in the light of the principles laid down in the aforesaid decisions, it cannot be said that the learned trial court was unjustified in his

approach for not taking into consideration the order and decree of divorce of the family court at the stage of framing of charge and confining itself on

the materials produced by the prosecution. Then arises the question whether the High Court in exercise of its inherent jurisdiction can look into any

materials produced by the accused in considering his plea for quashing of an FIR and/or a charge sheet and the consequent criminal proceeding and if

yes, in what situations.

21. The answer is not at a far distance. In the decision in *Debendra Nath Pathi* (supra) itself, the issue regarding an accused who is otherwise

required to face the trial, despite availability of sufficient materials at his disposal, has been considered. Regarding the argument of accused having to

face the trial despite being in a position to produce materials of unimpeachable character of sterling quality, it has been observed that the width of the

powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the

High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within

the parameters laid down in *Bhajan Lal vs. State of Haryana*, 1992 Supp (1) SCC 335.

22. In *Bhajan Lal* (supra), the Supreme Court has laid down seven categories of cases, by way of illustration, in which the inherent powers under

Section 482 of the Code can be exercised in an appropriate case, as under :-

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 extra-ordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein

such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of

myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an

arbitrary jurisdiction on the Court to act according to its whim or caprice.â??

23. In Rukmini Narvekar vs. Vijaya Satardekar and others, reported in (2008) 14

SCC 1, the power under Section 482 of the Code has been considered in the context of Section 227 of the Code when an accused is in a position to produce materials of sterling quality in his defence and with reference to Bhajan Lal (supra) and Debendra Nath Pathi (supra). In Rukmini Narvekar (supra), it is opined that the larger Bench in Debendra Nath Pathi (supra) has made a conscious distinction between a proceeding under Section 227 of the Code before the trial court and a proceeding under Section 482 of the Code and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482, CrPC. Referring to paras 21 and 29 in Debendra Nath Pathi (supra), the Supreme Court in Rukmini Narvekar (supra) has observed that the larger Bench did indicate that the width of the powers of the High Court under Section 482, CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court. There is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227, CrPC can be taken into consideration by the trial court at that stage. However, in a proceeding taken therefrom under Section 482, CrPC the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained.

24. In Harshendra Kumar vs. Rebatilata Koley and others, reported in (2001) 3 SCC 351, it is observed that it cannot be said as an absolute proposition that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482, CrPC or for that matter in exercise of revisional jurisdiction under Section 397, CrPC. It is held as fairly settled that while exercising inherent jurisdiction under Section 482, CrPC or revisional jurisdiction under Section 397, CrPC in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark

upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

25. In *Rajiv Thapar and others vs. Madan Lal Kapoor*, (2013) 3 SCC 330, the Supreme Court has laid down the parameters for looking into the materials produced by the accused in the following manner :-

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it

is clear that the same would not conclude in the conviction of the accused.â??

26. In *Anand Kumar Mohatta and another vs. State (Govt. of NCT of Delhi)*, reported in (2019) 11 SCC 706, the Supreme Court has held that there is

nothing in Section 482, CrPC which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice

only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of the Code even when the

discharge application is pending with the trial court. It is observed that indeed, it would be a travesty of justice to hold that proceedings initiated against

a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialised into a charge sheet. On the

contrary it could be said that the abuse of the process caused by FIR stands aggravated if the FIR has taken the form of a charge after investigation.

The power is undoubtedly conferred to prevent abuse of the process of any court.

27. In the fact situation obtaining in the case, it is ex-facie evident that the informant while filing the complaint on 12.11.2010, had deliberately

suppressed the material fact of passing of the order of divorce by the learned family court on 20.08.2010 on mutual consent. The statutory mandate

contained in Section 13B of the Hindu Marriage Act, 1955 is that a petition for dissolution of marriage by a decree of divorce may be presented to the

family court by both the parties together on the grounds (i) that they have been living together separately for a period of one year or more, (ii) that

they have not been able to live together and (iii) that they have mutually agreed that the marriage should be dissolved. At the cost of repetition, it may

be stated that the marriage between the accused no. 1 and the victim was solemnized on 09.02.2009, meaning thereby, the accused no. 1 and the

victim were staying separately for atleast one year before 20.02.2010. The joint petition under Section 13B of the Hindu Marriage Act, 1955 was filed

on 20.02.2010 i.e. immediately after expiry of a period of one year from the date of marriage on 09.02.2009. As per the statutory mandate contained

in Section 13B, such a decree of divorce on mutual divorce can ordinarily be passed immediately after expiry of a period of six months from the date

of presentation of the joint petition. The order of dissolution of marriage between the accused no. 1 and the victim was passed by the learned family

court on 20.08.2010 i.e. immediately on the next day of expiry of the period of

six months from the date of presentation of the joint petition. The above facts have not been denied by either the informant or the victim at any point of time. Rather, they have suppressed these material facts. The said order dated 20.08.2010 had attained finality as no challenge was made to the said order. On query, the said fact is also confirmed by the learned counsel for the informant. There is nothing wherefrom it can be inferred that the said order was obtained by force, coercion or misrepresentation. The undeniable fact is that the accused no. 1 and the victim had not stayed together as husband and wife even for a single day. This criminal petition has been preferred in the year 2013 and the informant had entered his appearance after service of notice. In all these 7 (seven) years, the informant has not denied the existence of the final order and decree of the learned family court passed in respect of dissolution of marriage between the accused no. 1 and the victim on mutual consent.

28. But in the FIR, the informant had referred to 3 (three) incidents which had taken place after the passing of the order of divorce on mutual consent between the accused no. 1 and the informant on 20.08.2010 and those were of 02.11.2010, 10.11.2010 and 11.11.2010, when the accused no. 1 and the victim was no longer in the relationship of husband and wife. As per the informant, on 02.11.2010, the accused no. 1 left the victim in front of his house whereas on 10.11.2010, the accused no. 1 did not receive the phone calls from the victim. On 11.11.2010, the victim had consumed poison as a result of which she had to be hospitalized, but no participation of the accused persons was alleged in the said incident. Section 498A, IPC cannot be attracted in respect of events which had occurred subsequent to the dissolution of a marriage between the husband and the wife by a decree of divorce on mutual consent.

29. In respect of the events after the marriage, the informant had alleged that there were incidents of cruelty because the victim and the accused no. 1 had cohabited for a period after the marriage on 09.02.2009. This allegation completely runs contrary to the averments made in the joint petition filed by the accused no. 1 and the victim, already quoted above, before the learned family court wherein they had specifically stated that differences cropped up during the date of marriage itself and they had not stayed together even for a single day or night. They had also admitted that the marriage

between them had not been consummated. There is no specific allegation against the accused no. 2 in the entire FIR. It was alleged that the accused

no. 1 had demanded dowry on the advice of the other accused. With such kind of allegation, the accused no. 2 cannot be brought in with the aid of

Section 34, IPC. As regards demand of dowry, no specific instance had been mentioned. It was merely alleged that the accused no. 1 had demanded

dowry in the form of a bike and Rs. 1,00,000/-. The victim was sent to the house of the informant on a number of occasions but it was bereft any

other details. The averments and allegations made in the complaint do not contain the requisite ingredients to attract the offence of cruelty defined

under Section 498A, IPC.

30. In the considered opinion of the Court, the material relied upon by the accused in the forms of (i) the joint petition dated 20.02.2010, (ii) the order

dated 20.08.2010 of the learned family court; and (iii) the decree dated 05.10.2010 of the learned family court, satisfy all the parameters laid down in

Rajiv Thapar (supra). The documents are sufficient to reject and overrule the factual assertions contained in the FIR filed in the case in hand. Further,

on a reading of the FIR also, the ingredients for the offences under Section 498A, IPC and Section 34, IPC are not found demonstrated.

31. Thus, this Court is of the unhesitant view that the institution of the criminal prosecution against the accused persons in G.R. Case no. 799/2010

through the FIR by the informant, is not for intention which can be termed bonafide. Rather, it goes to show that the launching of the criminal

prosecution by the informant through the FIR is to use it as an instrument of harassment and to wreak vengeance on the accused persons. It is true

that the Court in exercise of the powers under Section 482, CrPC should not stifle a legitimate prosecution. It is also true at the same time that the

Court should interfere when it is found on the basis of the materials on record that the criminal prosecution launched is not a legitimate prosecution.

32. In the light of the discussions made above, this Court is of the view that the allegations made in the complaint/FIR and the materials contained in

the charge sheet cannot sustain a charge under Section 498A, IPC and the continuance of the criminal proceeding of G.R. Case no. 799/2010,

presently pending before the Court of learned Chief Judicial Magistrate, Bongaigaon, against the accused persons would be against the interests of

justice and such prosecution would amount to abuse of the process of court.

33. In such view of the matter, this Court is of the view that the criminal proceeding in G.R. Case no. 799/2010 and the order framing charge dated

21.04.2012 are not sustainable in law and the interests of justice will be best subserved if the criminal proceeding in G.R. Case no. 799/2010 and the

order dated 21.04.2012 framing charges against the accused persons i.e. the two petitioners are set aside and quashed. Accordingly, the same are set

aside and quashed. The accused persons are to be treated as discharged from the charges under Sections 498A/34, IPC. With the observations made

and directions given, this criminal petition stands allowed. There shall, however, be no order as to cost.