

(2001) 10 DEL CK 0041
In the Delhi High Court
Case No : Criminal W. No. 60 of 2000

Raj Kumar Khanna

APPELLANT

Vs

The State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 155(2), 156(1), 482
Evidence Act, 1872 — Section 113
Hindu Marriage Act, 1955 — Section 27
Penal Code, 1860 (IPC) — Section 304, 34, 406

Citation : (2002) 95 DLT 147 : (2002) 1 DMC 200 : (2002) 61 DRJ 365

Hon'ble Judges : Usha Mehra, J; Mahmood Ali Khan, J

Bench : Division Bench

Advocate : D.C. Mathur and Rebecca John, for the Appellant; Mukta Gupta for the State, P.N. Lekhi, Sernior Advocate and Vijay Chaudhary, for the Respondent

Judgement

Usha Mehra, J.—Mr. Raj Kumar Khanna, a practicing lawyer of this Court has sought for the quashing of the FIR No. 146/99 registered at Police Station Naraina, u/s 498A/406/34 Indian Penal Code (In short IPC) against him and his family members at the instance of his daughter-in-law Ms. Inderjit Kaur Sidhu, respondent No. 5 another practicing lawyer of this Court.

2. Son of the petitioner Manoj Kumar is also a practicing lawyer of this Court. He got married to Inderjit Kaur Sidhu on 22nd September, 1996 according to Hindu rites at Gurudwara in Sarojini Nagar, New Delhi. After the marriage the newly married couple started living with the petitioner in his apartment. Relations between newly married couple became strained. According to petitioner, respondent No. 5 did not subscribe to the view points and values of petitioner and his family. She was adamant and not interested to live with her husband in the family of her husband. She left the matrimonial home on 5th September, 1997 informing her husband that she would never come back. Son of the petitioner filed a petition for divorce. Along with this petition Manoj also filed an

application u/s 27 of the Hindu Marriage Act attaching list of articles left by respondent No. 5. The said petition was listed on 26th May, 1999. Summon on that petition was ordered to be issued. It is further averred that respondent No. 5 on becoming aware of Manoj Kumar's filing of a petition of divorce, fabricated a complaint not only against her husband, but implicated all family members of the petitioner with oblique motives and as a retaliation to the divorce proceedings initiated by Manoj Kumar. Respondent No. 5 filed a well thought out complaint so that all members of petitioner's family could be implicated. The complaint dated 9th July, 1999 was lodged with the Deputy Commissioner of Police, South-West District, Vasant Vihar i.e. respondent No. 2. The said complaint was registered on 9th July, 1999 itself u/s 498A/406/34 IPC at Police Station Naraina. After the registration of the case, SI Nirmal Sharma, respondent No. 4 along with respondent No. 5 raided the apartment of the petitioner at 9.30 A.M. on 12th July, 1999. At that time the petitioner was about to leave his house in order to attend his cases in the High Court. Entire house of the petitioner was ransacked, every article stored in trunks and/or in wooden diwans and almirahs were pulled out. Each and every drawer and filing rack of his office was ransacked. Ms. Inderjit Kaur removed the sarees and gold jewellery of petitioner's wife claiming those to be hers. Police accordingly seized even the articles belonging to petitioner's wife. Inderjit Kaur not only got seized sarees and gold ornaments but removed letters, greeting cards which she had written to her husband during the period she stayed away from her husband. Those letters, greeting cards when produce would show that she was all complements for petitioner and his wife. Police in connivance with Inderjit Kaur took away photographs and a diary that contained notes of the outings made and places visited by Manoj Kumar and respondent No. 5. The object of conducting the raid was to remove documentary evidence from the house of the petitioner which would have otherwise proved their innocence and falsity of the allegations made by respondent No. 5 in her complaint dated 9th July, 1999. Protest was raised by the petitioner and his wife than the articles like letters, photos, diary and greeting cards could not form "Stridhan" hence these could not be seized. But police in particular respondent No. 4 in connivance with respondent No. 5 brushed aside the protests of the petitioner. Illegally and forcibly police permitted respondent No. 5 remove those letters, greeting cards, diary and photographs. Petitioner insisted signing the seizure memo. Respondent No. 4 forced by petitioner allowed him to counter sign the letters, greeting cards, photos and the diary. Seizure memo was prepared at the spot. Thereafter the petitioner and his wife were arrested. However, bail was granted to them subsequently. While filing the charge-sheet, the said letters, greeting cards, photos and diary have not been filed as a part of the documents. This the respondents did it deliberately. It amounts to tampering with the evidence. The police authorities acted on extraneous consideration and in a hurry without verifying the facts in raiding his house. This act of the respondents has caused irreparable loss to the reputation of the petitioner. Allegations made in the FIR do not implicate the petitioner nor any allegations leveled against petitioner fall under the provision of Section 498A

or u/s 406 IPC. Therefore, seeks quashing of FIR against him as well as the proceedings emanating there from.

3. Counsel for the respondents took preliminary objection on the maintainability of this writ petition, inter alia, on the ground that charge-sheet has already been filed and the proceedings initiated, Therefore, the FIR cannot be quashed. We find no substance in this argument in view of the Full Bench decision of this Court in the case of Neelam Mahajan Singh v. Commissioner of Police and Ors. 1993 JCC 536. Article 226 of the Constitution of India empowers the Court to issue an appropriate writ. It does not restrict or effect the power of this Court in appropriate cases to take action merely because charge-sheet has been filed. Supreme Court in the case of Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, held that where allegations do not make out any offence, powers u/s 482 Cr.P.C. can be exercised. It is not necessary for the Court to wait for the framing of the charge. This power can be exercised earlier than the framing of the charge. Therefore, contention of counsel for the State or for that matter of the respondent No. 5 that the challan has been filed and all these objections can be raised at the time of framing of the charge, in view of decision in Ashok Chaturvedi's case (Supra) has no substance.

4. Mr. D.C. Mathur, Senior Advocate, appearing for the petitioner has sought quashing of FIR on the following grounds:- (1) that the procedure adopted by SI Nirmal Sharma was extraordinary. It is contrary to the well regulated procedure followed by the police in other similarly situated case; (2) that the allegations leveled against the petitioner do not make out any case either u/s 406 IPC or u/s 498-A IPC; (3) The complaint dated 9th July, 1999 was lodged at the instance of respondent No. 5 after two years of her leaving the matrimonial home. It is a meticulously executed legally drafted document and well thought out comprehensive complaint. There was no reason for the police to record her alleged supplementary statement purported to be recorded on 10th July, 1999. This smacks of malafide on the part of the investigating officer who in connivance with respondent No. 5 falsely implicated each and every member of petitioner's family.

5. Challenging the procedure adopted by the police in rushing through action on the complaint, Mr. Mathur contended that it was contrary to the directions issued by Commissioner of Police. Complaint was lodged by respondent No. 5 with the Deputy Commissioner of Police (South-West District) Delhi on 9th July, 1999 and at a super speed the FIR bearing No. 146/99 was ordered to be registered at Police Station Naraina against the petitioner and his family members. The speed at which the FIR was got registered shows malafide on the part of police officials. In the normal course the complaint ought to have been endorsed by SHO Police Station Naraina and then forwarded it to Crime Against Women Cell. Since there was a connivance between respondent No. 2 i.e. Dy. Commissioner of Police (South West District) and Ms. Inderjit Kaur Sidhu (respondent No. 5) the case was got registered on the basis of covering letter sent by Asstt. Commissioner of

Police (Crime) with direction to register the case and, thereafter transferred the investigation to the Crime Against Women Cell, Vasant Vihar, New Delhi. This action is contrary to the general practice and procedure followed by the Crime Against Women Cell. In this regard Mr. Mathur drew our attention to the rejoinder affidavit filed by the Deputy Commissioner of Police (Police Head Quarters-II) in CrI.W.No. 127/1992 to show that the Crime Against Women Cell was created by the Commissioner of Police to receive such complaints and then make efforts to ascertain facts and try for reconciliation. Mr. Dinesh Mathur in particular referred to paras 4 & 5 of the said affidavit in support. Those paras are reproduced as under:-

4. Unfortunately, during the last decade there has been sharp increase in the cases of bride burning, homicide, suicide on account of cruel treatment meted out to the brides at the hands of husbands, in-laws or on account of dowry demands and that necessitated the establishment of Special Cell to enquire into and investigate such like incidents and thus a cell known as "CRIME AGAINST WOMEN CELL" was established by means of S.O. No. 281/1989 (Copy of which is annexed hereto as Annexure-"A").

Many a times it has been urged that when a complaint of a bride against the husband and in-laws is received by the staff of the Crime Against Women Cell why a case is not immediately registered in terms of Section 154 of Criminal Procedure Code. In this behalf, with respect, it is submitted that it is thought advisable in cases where the differences have not reached the stage of tragedy, the attempt should be made to forge unity between the two spouses so that they are brought about to make the marriage a success. On failure of these reconciliation attempts the law should be permitted to take its course, secondly, it is submitted that Section 154 Cr.P.C. does not in absolute terms command the registration of a First Information report and more so when in majority of the cases, the complaints, are made to higher authorities and not to the in charge of Police Stations. With respect, it is submitted that keeping in view the prevailing atmosphere of cruelty towards women the legislature in its wisdom introduced Section 498-A and 304-B in the Indian Penal Code.

5. The proceedings taken up by the Crime Against Women Cell are mainly directed to bring about a reconciliation between the strained spouses. It is always kept in mind that the petitioner-wife should not drag the husband-respondent straight to the Court, lest the relations between the couple become more strained. On the failure of reconciliation, resort to the provisions of law is taken to. It will not be out of place to mention that even the matrimonial courts, during divorce proceedings, try to bring about reconciliation between the parties. If a respondent chooses not to take part in the proceedings before the Crime Against Women Cell, well it is his sweet will. No action is taken for non-appearance. There is no compulsion for the respondent to take part in the proceedings. The proceedings are in the nature of enquiry to find out the truth as to the allegations made in the complaint before registering a case. For example,

it also becomes necessary to ascertain the factum of marriage even, and also the allegations of cruelty and Stridhan.

6. Mr. Mathur then contended that another affidavit was filed by the Deputy Commissioner of Police (Hqrs.-II) in CrI.W.No. 663/1995 wherein he has stated as under:-

"The proceedings by the Crime Against Women Cell are in the nature of enquiry to find out the truth as to the allegations made in the complaint before registering a case. For example it becomes necessary to ascertain the factum of marriage, even and also the allegations of cruelty and Stridhan."

7. In para 16 of this affidavit Mr. Srivastava, Dy. Commissioner of Police (Hqrs.-II) stated that the enquiry by the said CAW Cell is in the nature of primary enquiry with the sole object to make the marriage success and in case the matter is not reconciled between the parties the complaint is proceeded in accordance with law. In case the allegations made in the complaint are not found to be true the complaint is dropped/closed. He drew our attention to a press cutting appearing in the Times of India (Supplement) dated 21.9.1999. It as relied by the State and filed with its rejoinder affidavit to show that Crime Against Women Cell has never registered a case without a proper enquiry being conducted. It was also clarified that if a complaint is found to be baseless, officials of these Cells do not register a case. This was so stated by the Deputy Commissioner of Police (South West District). But police contrary to its own affidavit as referred to above acted just in the reverse. It did not bother to verify the facts nor bothered to call the parties for reconciliation. Instead police in a hurry registered the case in super speed. It is unimaginable that the Asstt. Commissioner of Public could have verified the complaint as per the requirements as spell out in the affidavit of Dy. Commissioner of Police (Hqrs.). Nothing has been placed on record to show what was the grave urgency in registering the case without holding preliminary inquiry particularly when the complainant herself conveniently slept over the matter for almost two years. This shows malafide on the part of the police who in connivance with respondent No. 5 wanted to harass the petitioner and his family and also wanted to destroy the evidence against her. Registration of the case was for extraneous considerations done under the influence used by respondent No. 5. Police Headquarter framed the procedure to be followed by the C.A.W. Cell with the intention of preventing abuse of the process of law. But in this case police committed abuse of the process established by its Commissioner. No attempt was made to resolve the difference between Manoj Kumar and respondent No. 5 nor efforts were made to bring about amicable settlement for which purpose Crime Against Women Cell was created. This cell is meant to safeguard the marriage and not to ruin it by registering case immediately on the asking of the complainant. Once an FIR is registered it becomes difficult to solve matrimonial tangles and things reaches such a pas that it cannot be restored back. In this case because of the ulterior motive and due to malafide and under pressure exercised by respondent No. 5,

the FIR was registered in a shortest possible time and with haste police raided the house of the petitioner and arrested him and his wife in order to seek vendetta against them.

8. Mr. D.C. Mathur then urged that omnibus allegations cannot be taken at their face value. It is so held by Supreme Court in the case of Lala Ram and others Vs. State of U.P., Apex Court in that case observed that duty of the Investigating Officer is not merely to bolster up prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. Similar view was expressed by Supreme Court in the case of Jamuna Chaudhary and Others Vs. State of Bihar, That legislative intent of providing succour to a genuinely harassed and tormented woman cannot be permitted to become a tool/instrument in the hands of a woman out to satisfy her ego by harassing and tormenting her in-laws when her marriage has failed for reasons extraneous to the relevant provision of law. In support of his contention Mr. Mathur placed reliance on the decision of Supreme Court in the case of G.V. Rao v. L.H.V. Prasad and Ors. : 2000CriLJ3487 where his Lordships observed:-

"There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case."

In the case in hand by implicating petitioner and the speed with which police acted did nothing but rendered him helpless in counselling and putting better sense to the couple.

9. Mr. Lekhi countering these arguments urged that expediting the action by itself is no ground to quash the FIR. We agree with Mr. Lekhi that on this ground itself FIR cannot be quashed but at the same time we cannot ignore the haste with which police acted violating its own guidelines.

10. Reading of the complaint makes it apparent that Court has been used for oblique purposes contended Mr. Mathur. There are no chance of any ultimate conviction against the petitioner on the allegations made in the complaint. Since the powers have been executed malafide by respondent in connivance with each other for extraneous consideration in order to harass the petitioner without even substantiating the same, Therefore, such an FIR cannot stand, it has to be quashed so said the Supreme Court in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, Mr. Mathur drew our attentions to the guidelines laid down by the Supreme Court for quashing the FIR in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . Paragraph 107 of the said judgment litemise guidelines as follows:-

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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroversial 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 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 u/s 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 malafide 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.

11. Mr. Mathur contended that guidelines Nos. 5 and 7 are material for the purpose of quashing the FIR in question. The guidelines No. 5 stipulate quashing of the FIR where allegations are so absurd and inherently improbable that no prudent person can reach a just conclusion that there are sufficient grounds for proceeding against the accused. Relying on this guideline, Mr. Mathur contended that the petitioner who is a practicing lawyer aged about 65 years has been attending the court regularly and so is the case of respondent No. 5, if any cruelty had been inflicted on her she could not have attended the court every day moreover this fact would have been known in the Bar to every one. But nothing of this sort happened. Allegations that petitioner gave beating to respondent No. 5 with stick and taunted her are so absurd and inherently improbable that this Court must necessarily reject the same. Guideline No. 7 as reproduced above indicates that where a criminal proceeding is manifestly attended with malafide and/or where the proceedings 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, such an FIR must be quashed. On facts of this case, allegations leveled by complainant smacks a malafide and personal vendetta

from start to finish. The complainant left the matrimonial home on 5.9.1997. As per her own showing she continued to keep channel of communication open with her husband even after leaving the matrimonial home. But when the petitioner's son filed divorce petition on 26th May, 1999 as a retaliation she lodged the present complaint in order to wreck vengeance. In this view of the matter the FIR lodged by her requires quashing. In the case of *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, Apex Court observed that "special features of a case" must also be taken into account at the time of quashing proceedings. Reliance was also placed on following decisions: *Madan Pal Singh Vs. State of U.P. and Others*, *Ashim K. Roy Vs. Bipinbhai Vadilal Mehta and others*, ; *Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another*, : *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, ; *Jagdish Mitter Maini Vs. Canara Bank and Another*, Cumulative affect of above decisions, according to Mr. Mathur, is that High Court's power to quash an FIR and proceedings initiated on extraneous consideration is extremely wide. It does not in any way stand diluted. Respondent No. 5 in connivance with police officials tampered with evidence when they removed letters, diary, greeting cards and photographs etc. These documents do not form part of the challan. If placed on record it will conclusively prove the allegations of the complainant to be absolutely false and baseless. The factum of removal of the letters, diary, greeting cards and photographs has been admitted by all the respondents, though the police officer in their affidavit have tried to wriggle out of their illegal act by saying that these letters, greeting cards, diary and photographs were voluntarily given by the petitioner as those belonged to the complainant hence were seized yet not produced with the challan. These by no stretch of imagination Officer not only committed illegality buy tampered and destroying the evidence. There was no question of petitioner voluntarily handing over these documents. Police is trying to cover up its misdeeds.

12. So far as the charge u/s 406 IPC is concerned Mr. Mathur contended qua the petitioner it must necessarily fail. Perusal of the FIR clearly show that respondent No. 5 or for that matter her family members never entrusted any property to this petitioner. In the absence of entrustment the petitioner cannot prima facie be held guilty of misappropriation. Even otherwise respondent No. 5 has made general allegations against the petitioner ascribing no specific role to him. The allegations made being omnibus allegations can be read to his advantage. Even if the allegations made in the FIR are accepted on its face value the petitioner can neither be convicted under Sections 406 IPC nor u/s 498A IPC. Complainant has named each and every member of the family just as a pressure tactics.

13. Mr. Mathur contended that a comprehensive legally drafted and well thought out complaint was lodged after 2 years of leaving the matrimonial house. There was no occasion for the police to build up new case by recording supplementary statement of the complainant. In her statement she specifically stated that except her father she did not disclose these facts to anyone. Hence the affidavit of neighbour obtained by the police was motivated. it was procured to falsely

implicate the petitioner and his family. According to complainant's own showing she left the matrimonial home on 5th September, 1997, whereas she lodged the complaint on 9th July, 1999 i.e. almost after two years. The delay in lodging the complaint remained unexplained. In fact this complaint was a counter blast to her husband's petition for divorce filed on 26th May, 1999 on which notice was issued on 3rd July, 1999. Notice could not be served on complainant because her house was found locked on 4th, 5th, 6th, 7th, 8th, 9th & 10th July, 1999. On learning that her husband had filed divorce petition she got legally drafted complaint. Reading of the said complaint leaves no manner of doubt that dates of alleged incidents mentioned in complaint and Hindi typed sentences are duly deliberated, thought out and manufactured to rope in petitioner's family. It is not a spontaneous complaint. Long drawn complaint can't be but deliberated, calculated and fabricated, no action on the same can be taken. To support his contention Mr. Dinesh Mathur, Senior Advocate, relied on the decision of Supreme Court in the cases of Datar Singh Vs. The State of Punjab, as well as Kans Raj Vs. State of Punjab and Others,

14. On the other hand Mr. P.N. Lekhi, Senior Advocate, appearing for respondent No. 5 vehemently contended that allegations in the FIR squarely make out case u/s 498A and 406 IPC. Contents of the complaint show petitioner to be guilty and his cruelty inflicted on respondent No. 5 squarely fall under the provisions of Section 498A IPC. He, however, accepted that ordinary conduct is not covered under the definition of Section 498-A IPC. Mr. P.N. Lekhi contended that the Statement of Objects and Reasons can be referred to if there is any doubt raised regarding the scope and intent of the amendment in the I.P.C. by virtue of which Section 498A was inserted. To support his contentions he referred to the case of Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, wherein Apex Court observed:-

"A statute is best understood if we know the reason for it. The Statement of Objects and Reasons are what is known as the Heydon's Rule."

15. He also placed reliance on the decision of Supreme Court in the case of Kanta Goel Vs. B.P. Pathak and Others, to contend that the interpretation must be illumined by the goal though guided by the word. Similarly in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, it was observed that:-

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is texture, the context is what gives colour. Neither can be ignored. Both are important, the interpretation match the contextual. A statute is best interpreted when we know why it was enacted."

Section 498A was enacted keeping in view the increasing number of dowry death and the harassment caused to married women by their husbands and the in-laws and in order to pre-empt their status. Since this is the intention of the Legislature, Therefore, Mr. Lekhi contended that the FIR in question cannot be

quashed on the technical pleas raised by Mr. D.C. Mathur. The FIR in question discloses cognizable offence against the petitioner. Moreover, demand of dowry is not a pre-condition nor necessary to attach the provisions of Section 498-A for that reliance on the decision of Supreme Court in the case *Pyare Lal Vs. State of Haryana*, was placed.

16. Countering the argument of procedural fault in investigation and registration of the case as pointed out by Mr. Mathur, Mr. Lekhi said that by not effecting reconciliation itself is no ground to quash the FIR. Reading of the complaint makes out a case for which petitioner has been rightly booked. The complaint categorically states that in spite of the best efforts made by her and her relations reconciliation was absolutely beyond reach because of the adamant attitude of the accused persons. Once the FIR discloses a cognizable offence police officer is duty bound to register the case as held by Supreme Court in the case of *Kuldeep Singh v. State* 1994 JCC 414. In the present case since there are specific allegations of cruelty which prima facie constitute an offence u/s 498A/416 IPC, Therefore, this court would not like to quash the FIR and the proceedings emanating there from. Supreme Court in the case of *Rajesh Bajaj Vs. State NCT of Delhi and Others*, held that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest or rare case. Similar view was taken by the Supreme Court in the cases of *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, where the Apex Court observed that:-

"Maladies or animus of complainant or prosecution not relevant, if on the basis of allegation in the complaint a prima facie case is made out, the High Court has no jurisdiction to quash the proceedings."

17. That filing of the divorce petition by the petitioner's son will not absolve the petitioner of the offence committed by him and other members of his family. In fact his son filed the divorce petition in order to cover up the cruelty committed towards the complainant. Complainant was not aware of the divorce petition having been filed by her husband when she lodged the complaint. The delay in filing the complaint has already been explained in the complaint itself. She and her family members were making efforts to bring about the reconciliation hence did not deem it proper to rush to the police.

18. Before we deal with the case on merits we may make it clear that charge sheet in this case has already been filed. With that charge-sheet supplementary statement of the complainant and other documents have been filed. Question arose whether for deciding this petition at this stage can this court look into and rely on all the papers filed with the charge-sheet. Mr. D.C. Mathur, Sr. Advocate fairly conceded that the documents forming part of the charge-sheet can also be perused while considering then question of quashing the FIR.

19. In order to appreciate respective merits of the case as urged by counsel for

the parties, we may have glance to the provision of Section 498-A and 406 IPC which are reproduced as under:-

406. Punishment for criminal breach of trust.-

Whomever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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" 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 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 related to her to meet such demand.

20. That the argument of Mr. Lekhi that demand is not a precondition to constitute cruelty, we are afraid we cannot subscribe to this view. The provision of Section 498-A was brought on the statute book because of the increasing number of dowry deaths. It is a matter of serious concern. Cases of cruelty by husband and his relations which culminate in suicide by, or murder of, the hapless woman concerned constitute only a small fraction of the cases involving such cruelty. Indian Penal Code and the Indian Evidence Act were suitably amended to deal effectively not only with the cases of dowry deaths but also cases of cruelty to married women by their in-laws. Even if the conduct of the husband and in-laws which is willful has not actually led her to commit suicide or caused grave injury or danger to life, limb or health, but such a willful conduct which causes physical and mental torture amount to cruelty. The intention of the Legislature is clear that the wife is not to be ill-treated by her husband and in-laws under any circumstances be that of a willful conduct or constant harassment nagging humiliation, mal-treatment or physical or mental torture. The intention to insert Section 498-A IPC was to provide a better and respectable status to a woman at her matrimonial home apart from curbing dowry menace. Supreme Court in the case of Brij Lal Vs. Prem Chand and Another, also had a change to consider the object and purpose of introducing provisions of Section 498A/304 and Section 113-A and 113-B in the 4;79H7m9m9;10H Evidence Act and observed:-

The degradation of society due to the pernicious system of dowry and the

unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provisions of law, procedural as well as substantive, to combat the evil and has consequently introduced Sections 113-A and 113-B in the Evidence and Section 498A and 304-B in the Penal Code."

In the case of Pawan Kumar and Others Vs. State of Haryana, Apex Court observed that the courts must adopt that construction which "suppresses the mischief and advances the remedy."

21. While bringing the provision of Section 498-A IPC on the Statute book, the Legislature did not define the word "Cruelty". IT has been used in relation to human conduct and human behavior. Reading of Explanation (a) of Section 498A IPC makes it clear that it deals with cruelty arising out of willful conduct to harm the woman and that willful conduct has to be of such a nature as is likely to drive the woman to commit suicide or to cause grave injury to her life, limb or health. On the other hand Explanation (b) deals with cruelty related to demand of property or valuable security. Therefore, in one case cruelty is willful which forces woman to commit suicide but Explanation (b) relates to demand. Demand is a pre-condition to attract the provision of Explanation (b) of Section 498A IPC. Admittedly complainant has built her case on Explanation (b) of Section 498A IPC.

22. Keeping the intention of the legislature in mind we have to see whether the conduct of this petitioner as alleged by respondent No. 5 in her complaint dated 9th July, 1999, as well as of supplementary statement dated 10.7.99 and other documents relied by the prosecution amount to cruelty falling under Explanation.

(b). This means the act of the petitioner towards respondent No. 5 must relate to "unlawful demand". Perusal of allegations leveled by the complainant either in her complaint or supplementary statement against this petitioner according to Mr. Mathur would not constitute cruelty related to unlawful demand. Moreover language of the complaint cannot be said to be spontaneous. Alleged dates of incidents appears to have been picked up which fell on various festivals and courts were closed so that conveniently she could level allegation. For example 20th October, 1996 was Karva Chouth, 10th November, 1996 was Deepawali, 13th January, 1997 was Lohri and 14th January, 1997 was Sankranti. On all these dates this Court was closed. In the case of Datar Singh v. State of Punjab (Supra), the Apex Court found that such an FIR becomes suspicious when it was neatly written. Mr. Mathur further said that the way this complaint was written it cannot be called spontaneous, rather it appears to be calculated. The Apex Court in the case of Kans Raj Vs. State of Punjab and Others, observed :-

"A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not, discouraged is

likely to affect the case of the prosecution even against the real culprits."

23. Bombay High Court in the case of Sarla Prabhakar Waghmare v. State of Maharashtra and Ors. 1990 (2) R C R 18 observed that:-

"It is not every harassment or every type of cruelty that would attract Section 498A IPC - Beating and harassment must be to force the bride to commit suicide or to fulfill illegal demands."

Similar view was taken by the Punjab & Haryana High Court in the case of Richhpal Kaur v. State of Haryana and Anr. reported as 1991 (2) R C R 53 wherein it is observed that:-

"Beating given to bride by husband and his relations due to domestic disputes and not on account of demand of dowry - Offence u/s 498A IPC not made out."

Supreme Court in the case of Kans Raj v. State of Punjab & Haryana (2000) 5 SC 207 held that :-

"Proximate or live link must be shown to exist between the course of conduct relating to cruelty or harassment in connection with dowry demand."

24. In this case prosecution's case revolves around the complaint and other material annexed with the charge sheet. Therefore keeping in view the objection of inserting the provision of Section 498-A IPC and the Law laid down, we may look to the complaint dated 9th July, 1999 which is reproduced as under:-

To Deputy Commissioner of Police, South West District, Vasant Vihar, New Delhi

Complaint Against

1. Mr. Manoj Khanna s/o Mr. Raj Kumar Khanna

2. Mr. Raj Kumar Khanna

3. Rohit Khanna s/o Mr. Raj Kumar Khanna

w/o Raj Kumar Khanna

all r/o 166, Aravali Apartments Alaknanda, New Delhi-110 019

Sir,

1. This is to inform you that I was married to Mr. Manoj Khanna on 22.9.96. Both of us are practicing lawyers. Before marriage my husband said that he is having a good practice and earning about Rs. 25,000/- per month. My parents, my relatives and my friends gave lot of items as gifts on different occasions and also at our marriage, list of which is enclosed as Annexure "A". My mother-in-law and relatives from husband's side gave me few items as gifts, the details of which is also enclosed as Annexure "B". Shockingly just within few days of my marriage, my husband, his brother and his parents all of them started taunting me for not bringing sufficient dowry as per their standard and expectations. My mother-in-

law used to taunt me and use to say "that me and my family have fooled them and has played fraud on them since I had not brought enough dowry and said that since she belongs to Amritser and has known the Jat community very well and they are known for giving lot of dowry on their daughters wedding, but in my son's case you people had played fraud on us. My son used to get lot of proposals of rich girls." She used to use the filthiest abuses for me like "KUTTI, HARAMZADI, KAMINI, HAMARE PALLE PAD GAI HAI, HAMARE SATH DHOKHA HUA HAI, ASSEE TE SOCHYA SI KI JATTAN VICH BAHUT KUCHH DITA JANDA HAI."

2. All of them in fact used to use abusive and filthiest of language to taunt me and harass me.

On 23.9.96 I went back to my parents house along with my husband for Pears and my parents gave me sweets and gifts for my in-laws (as stated in the Annexure-A). On my return to the house some of the relatives from in-laws side were also present in the house and when I showed the gifts and sweets to them, they made fun of me and taunted me along with my mother-in-law and brother-in-law that they are not happy with what I have got and said that all these things even a Peon can give to his daughter and look at your standard.

3. My agony continued with each occasion which followed month after month. On Karva Chauth i.e. 22.10.96 my father along with one of his cousin came to my house with lot of gifts, cloths, sweets and utensils as per the custom for my mother-in-law, brother-in-law, husband and father-in-law. Moment they left all of them started abusing me and taunting me stating that nothing is being given as per their standard and they had expected more than this. My mother-in-law also demanded that as per this custom gold is to be given on this occasion, but your parents have not given anything and I was aghast and shocked with their behavior and tried to ask my husband as to what is wrong in the gifts which have been given. Instead of replying he slapped me and I had no option but to suffer and sulk within myself which resulted in lot of mental trauma and physical tension which effected my health.

4. On the Diwali day i.e. 10.11.96 again my parents Along with my relatives came to our house with lot of gifts and sweets and my in-laws instead of welcoming them were rude and dry to them. After they left once again my brother-in-law Along with my mother-in-law showered the filthiest abuses and taunts and also did not give any food to me to eat on that day. On the next morning my mother-in-law gave stale food for me to eat. My father-in-law and husband also taunted me and said that I am a liability on them as there are no gains from me to them.

5. On the Lohri day i.e. 13.1.97 since my in-laws were not celebrating the same as there was a death in their family, my father Along with his friend visited the house during the day time and gave Rs. 5,000/- to my mother-in-law as a Saigon for this day and told her that since there was a death in the family he has

not got any gifts or sweets. My mother-in-law at that time quietly took over the money, but moment they left all of them punched on me with the same taunts and also my father-in-law and my husband gave me beating with sticks. I had no option at that moment but to be quite and suffered silently and also did not tell anybody about the same since I wanted to save my marriage and probably thought that one day they will realize their mistake.

6. On 13th January" 97 my mother-in-law in the night told me that since tomorrow is an auspicious day i.e. 14th January, I will remove your Chudda, ask your father to send same gifts and cloths for her. But I could not inform my father, so next morning I myself went to market and bought a suit for her along with certain Puja items and sweets but she didn't like them and started abusing me and my parents for not giving her anything.

7. As a mark of respect I used to hand over all the items and gifts to my mother-in-law i.e. jewellery. Sarees and were being kept with my mother-in-law. Certain cloths of my daily use were with me and were Along with some piece of jewellery like 2 pairs of gold earrings and 2 rings for my daily use, but the keys of the almirah were always with my husband. It is worth mentioning here that the items like tape recorder, transistor, emergency light, certain sarees, 6 bed sheets, certain crockery items which were given to me on different occasions by my parents were handed over to my brother-in-law by me on instructions of my mother-in-law as she told me that these items will be required at the time of the brother-in-law as she told me that these items will be required at the time of the brother-in-law's marriage. My in-laws and my brother not only used to taunt me but all of them use to beat me on one pretext or the other. I was not allowed to touch anything of the house and also even if there were any phone calls for me which I used to attend, my brother-in-law in the filthiest language to use tell me "PHONE TERE BAAP KA NAHIN HAI, BILL TERE BAAP KE GHAR SE NAHIN JATA, JO PHONE use KARTI HIA." He further started insulting everyone, who so ever use to call me like my friends, relatives and including my parents.

8. My brother-in-law was so cruel and a rowdy character that he is fact used to beat me with belt and a stick lying in the house. On my complaint my husband used to tell me that since I was not earning enough of money so Therefore these problems would continue. In fact he was so unfair and cruel in making statements like if you meant to be happy in this house you earn about Rs. 20,000/- to Rs. 25,000/- a month an give it to them. Nobody would dare to say anything to you. He further used to give me example of his cousins who were married into rich families and he used to tell me that their wives are earning Rs. 30,000/-, 40,000/- per month and nobody dares to say anything to them and at the time of monetary needs their in-laws always help them, but look at your parents, they have not given anything to make you happy.

9. My father-in-law and on different occasions my mother-in-law and my husband used to tell me that my parents should sell of their immovable properties lying useless at my native place and should arrange to buy a flat for

them in a good locality in Delhi. To save my matrimonial life I continued suffer silently and did not raise my voice and tried to adjust to the maximum. However they did nt mend their ways and continued to torture me in different ways including the way mentioned above. Because of this torture and the cruel behavior of my husband, brother-in-laws, and mother-in-law and father-in-law I suffered great physical and mental pain and agony. So much so that on number of occasions I had nervous breakdown and the Doctors attending to me categorically diagnosed that my indisposition was mainly became of mental tension. Apart from this on more than once occasion I suffered physical injury in my body on more than one occasions as mentioned above.

10. My brother-in-law, mother-in-law, also started taunting and insulting me at the relatives places whenever I used to go there with them and used to make fun of me. In the month of June" 97 on once such occasion me my husband my mother-in-law and brother-in-law went to reside for a day at one of the relative in Faridabad. In the morning my husband and my brother-in-law had a fight for some reason and my husband became furious and asked me to leave the place along with him. I did same when my husband asked for the car keys from my brother-in-law & my brother-in-law and my mother-in-law told my husband in front of me "Isle baap ki gaadi nahin hai, gadi mein ghumna hai to Isle baap ko bol kam se kam thodi sharm kar le aur apni beti aur damad ke liye ek car to kharid de, itni hasiyat to hai uski." That day I came back with my husband in scorching heat. Since we had to walk for about two kilometres to catch the bus for Delhi, I suffered from severe sunstroke and no body took care of me.

11. On 5.9.1997 it was a usual morning in the house as usual there was a fight between my husband and my father-in-law which I have seen right from the day one of my entering the house with regard to some joint property money. I told my husband that why he is fighting for money with his father, he should stand on his own feet. To this my husband told me that I will be like this only if you don't like you can leave this house and slapped a newspaper on my face. I was slightly agitated on this and proved my father and asked him to come to the Court as I was wanted to tell him some thing since things were unbearable for me. I came outside the room and my mother-law-law started abusing me for nothing. To which I told that you are the one who has created all the problems because of her greediness of money. Moment I said this my brother-in-law started hitting me on my head with a belt in his hand and seeing my father-in-law and my husband silently watching this later on also joined my brother-in-law and also started hitting me with blows and legs. My husband then dragged me to my room and locked me inside my room, luckily the phone was in my room and I immediately called my father and asked him to come as soon as possible, Since I could not bear the humiliation and injuries I could hear outside the room filthiest abuses and languages being said by my mother-in-law an brother-in-law. "YEH DO TAKE KI AURAT APNE APP KO KYA SAMAJHATI HAI, IS KE BAAP NE KYA DIYA HAI, JO ISSE APNE GHAR MEIN RAKHE JO Isle PAAS THA, WOH TO MIL GYA AB KYA RAKHA HAI IS MEIN DAFA KARO YAHAN SE." I immediately phoned my

father and asked him to come home directly. My father reached in 40 minutes. My husband in the meantime and opened the door and pushed me outside the house so I sat in the neighbours house. When I saw my father climbing up I called him and told him about the incidents and my father told me not to worry and pacified me and told me that he will talk to them. My brother-in-law had already left the house. My father-in-law and my husband apologised to my father for their act and requested him that you take her back for few days and my husband said that he would pick me up after 3-4 days. Despite their tortures and the cruel behavior I did not inform to anybody about this incident except my father for the sake of saving my marriage. However, I continued my efforts to talk my husband after this. But he always deferred the issue on one pretest or the other. Of late he even started saying that "I was their with him only on a trial basis since the trial period is over the file must be consigned to record room." My husband always used to boast about his contacts in judiciary and other circles and used to say that nobody can do any harm to him, no matter what may come he will never continued this relationship. During my stay with my parents number of time I demanded my Shri Dhan from my husband, his brother and parents, but all of them point blank refused to return the same which was kept with them. All of them on different occasion had a strange demand that I should agree for divorce on mutual consent so that my husband could be remarried to a rich family, according to them there were lot of such offers, even after my marriage to him and my mother-in-law also told me that girls are available in plenty of numbers there is no dearth of girls for his boy. They can choose and get anything they want among the girls an there was no need of yours. She use to say "KUDIYAN DA KOI GHATA NAHIN, BATHERIAN MILDYAN NE".

12. On number of occasions I told my husband in the court premises that since I was not having sufficient income to support myself, so Therefore he should pay me at least my pocket expenses and day to day expenses to maintain myself, but he always refused to do so. I through all quarters kept on making efforts and always hoped that some sense would prevail over them but thing went bad to worse. I may also inform your goodself that my relatives namely Mr. Ranjeet Brar, Mr. Joginder Mann, Mr. Gurdev Brar, My father and My younger brother and common friends namely Mrs. Anusuya Salwan etc. had made efforts to reconcile the issue but due to the greedy nature of the accused persons and their lust for dowry they had refused for any settlement.

13. That recently I have started receiving threatening telephonic calls from my in-laws or at their behest that in case I do not accept their illegal and unjustified demands me and my family will have to face dire consequences.

Now I am left with no option but to lodge this complaint and I request your goodself to kindly book the accused persons and take appropriate actions by registering a case against Mr. Manoj Khanna, Mr. Raj Kumar Khanna, Rohit Khanna and Mrs. Nirmal Khanna for causing physical and mental torture for demanding dowry and for not returning my Shri Dhan and refusing to maintain

me.

New Delhi Dated: ; 9-7-99 Complainant Inderjeet Sidhu d/o Sh. P.S. Sidhu r/o G-109 Naraina Vihar, New Delhi - 110 028.

25. Though the complaint was not paragraphed but for the sake of convenience it has been paragraphed and numbered.

26. Perusal of the complaint reproduced above show that qua the petitioner allegations are general in nature. In paras 4 & 5 of the complaint allegation against the petitioner are of harassment. Mr. Mathur contended that these allegation cann't constitute "cruelty" having nexus with demand. The only other allegation which can remotely be said to be cruelty is in para 9 where she says petitioner along with other members of his family suggested that her parents should sell their immovable property lying useless at her native place and buy them a house in good locality in Delhi. Except the allegation in para 9 she has not attributed any cruelty against the petitioner linking with any kind of demand. In para 11 she says she left the house on 5th September, 1997 because of he fight had nothing to do with her. Reading of para 11 shows that petitioner has not been accused of any cruelty rather as per her own showing, the petitioner apologised to her father who came to take her. She left the matrimonial home on 5th September, 1997 and after almost two years she lodged the complaint on 9th July, 1999 involving all the members of her husband's family.

27. We are in agreement with the contention of Mr. mathur that in order to attract the provisions of Section 498A it is not every harassment or every type of cruelty that would attract the provision of Section 498A. In this regard we are supported by the decision of Bombay High Court in Hatia Swain Vs. Chintamani Mishra, and Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra, . Court observed that cruelty by itself without demand would not be sufficient to bring home the guilt under Explanation (b) of Section 498A IPC. Harassment by itself is not a cruelty unless there is a demand of dowry and the cruelty is a consequence of that demand. Supreme Court in the case of State of Himachal Pradesh Vs. Nikku Ram and others, while interpreting the provisions of Section 304-B, 498-A, 306 and 324 IPC the Apex Court observed that harassment to constitute cruelty u/s 498A Explanation (b) must have nexus with the demand of dowry and if this is missing the case will fall beyond the scope of Section 498A. Pre-condition for attracting the provisions of Section 498A is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the woman without any nexus with the demand then such a cruelty will not be covered under Explanation (b) u/s 498A IPC. It may be a cruelty under Hindu Marriage Act as held by Supreme Court in the case of Shobha Rani Vs. Madhukar Reddi, . Apex Court observed that cruelty u/s 498A IPC is distinct from the cruelty under the Hindu Marriage Act which entitle the wife to get a decree for dissolution of marriage.

28. Mr. D.C. Mathur also challenged the date of recording the supplementary

statement. According to him it was not recorded on 10th July, 1999. It was ante-dated by the police in order to cover up the illegal raid conducted at the instance of the complainant thereby removing all the articles even belonging to petitioner's family. In her complaint dated 9.7.99 which was a well drafted complaint, she nowhere alleged that her "stridhan" was lying in the house of the petitioner. But police under presumption conducted the raid on 12.7.1999 and arrested petitioner and his wife. Therefore, to cover up the lapse police recorded supplementary statement on 10.9.1999 but changed the figure of 9 to 7 making it appear 10.7.1999. The supplementary statement even does not implicate the petitioner u/s 406 or u/s 498A IPC.

We have scrutinised the original file. There appears to be overwriting on figure 9. It is changed to 7. Mr. Mathur urged that recording of the supplementary statement was after thought to cover up the illegal act committed by police. We would not like to comment on the merits of the same as it may effect the case before the trial court.

29. Admittedly neither the compliant nor the supplementary statement show any entrustment of any property to the petitioner. In the absence of entrustment question of criminal breach does not arise. Since there was no entrustment of any articles to the petitioner, Therefore chances of ultimate conviction on this count are bleak. No useful purpose is going to be served by allowing the proceedings u/s 406 IPC to continue against this petitioner. In support reference can be made to the observations of Supreme Court in the case of *Alpic Finance Ltd. v. P. Sadasivan and Anr.* 2001 (1) AD SC 467, Apex Court while dealing with the inherent power of the High Court to quash the complaint and proceedings observed:-

"Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. We are of the view that the learned judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters."

Reference can also be made to the observations of Punjab & Haryana High Court in the case of *Lakhwinder Singh Vs. State of Punjab*, where it is held that an FIR is liable to be quashed if it does not contain specific allegations of either entrustment or of cruelty. Courts have consistently put an end to criminal proceedings at the initial stage, at the summoning stage and even after charges have been framed which are abuse of the process of Court. High Court has the inherent power to quash proceedings and to pass such orders as are necessary to prevent abuse of the process of the Court or otherwise to secure ends of justice. It is not disputed that such powers should be exercised only as per guidelines laid down by the Supreme Court in the case of *Chaudhry Bhajan Lal (Supra)*. Supreme Court in the case of *Madan Pal Singh Vs. State of U.P. and Others*, observed that High Court has inherent power to quash proceedings to

secure ends of justice to protect abuse of the process of law. If allegations in the FIR do not constitute an offence, then FIR can be quashed.

30. Seizing of letters, greeting cards, diary and photographs create doubt on the bonafide of the police action. We fail to understand how these could form part of "Stridhan". Decidedly police acted in haste in seizing such documents. No Explanation has been given why these documents were seized.

For the foregoing reasons we hold that no offence u/s 406 IPC in the facts of this case qua the petitioner prima facia has been made out. Accordingly FIR and proceedings emanating there from u/s 406 IPC are ordered to be quashed. But at this stage we are not inclined to quash the FIR u/s 498A IPC. It would be for the Trial Court to consider whether charge is made out or not?

With these observations the petition stands disposed. Any observation made hereinabove will have no bearing on the merits of the case before the Trial Court.