(2019) 03 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 118 Of 2017

Satish Angral And Ors — APPELLANT

Vs

State Of Jammu & Kashmir Ors — RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156, 156(3), 161, 467, 468, 468(1), 468(2)(c), 469, 470, 471, 472, 473, 482, 488, 538A, 538B
Hindu Marriage Act, 1955 — Section 13, 15
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 34, 323, 498A, 506
Code Of Criminal Procedure, 1898 — Section 561A
Indian Penal Code, 1860 — Section 406, 494
Constitution Of India, 1950 — Article 15, 21

Citation : (2019) 03 J&K CK 0014

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Rohit Verma, Raman Sharma, Ratish Mahajan

Final Decision : Dismissed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C) petitioners seek quashment of F.I.R. No.07 of 2017 dated 16.02.2017 registered with Police Station, Women Cell, Jammu for commission of offences under 498-A, 323, 506 r/w 34 RPC.

2. The factual matrix of the case are that petitioner No.1 was married to respondent No.4 on 08.05.2009 at Jammu and thereafter both of them used to reside at the matrimonial home established by petitioner No.1. However, the marital relations between the petitioner no.1 and the respondentno.4 have been lesser than cordial and conduct of respondent no.4 always played the spoilsport in the amicable relations between them. It is stated that respondent no.4 would not tolerate the presence of petitioner's mother, who is blind, in the home and she would further impute false and immoral allegations upon the petitioner no.1 which were tolerated by him till the time the respondent no.4 left the

matrimonial home out of her own accord. It is further stated that the adamant attitude of respondent no.4 and regular interference of her family into the matrimonial affairs has led to the collapse of matrimonial life of petitioner no.1.

3. Learned counsel for petitioners states that in the year 2012, respondent no.4 filed an application under Section 488 Cr.P.C. and keeping in view the social objective of preventing the spouse from starvation, the Court of ld. 2nd Additional Munsiff, Jammu directed a maintenance of Rs.5,000/- per month to respondent no.4 in February, 2016. It is stated that respondent no.4, after a lapse of about six years, filed a complaint before the respondent no.3 for registration of FIR against the petitioners in the month of April 2016. However, when confronted with the real facts by petitioner no.1, respondent no.4 settled for filing divorce by mutual consent under Section 15 HMA with petitioner no.1 settling for paying a permanent alimony of Rs.3.5 lacs along with return of all the items belonging to the respondent no.4 which she had left at the time of deserting petitioner no.1. It is stated that the said items were returned by the petitioner. It is further stated that the proceedings before the respondent no.3 were deliberately procrastinated by respondent no.4 without any rhyme or reason and she finally withdrew the proceedings after getting her statement recorded before the respondent no.3 to the extent that she has filed some civil suit before competent court. Thereafter, after a lapse of more than two months respondent no.4 approached the Court of ld. City Judge, Jammu by filing application under Section 156(3) Cr.P.C. and obtained an order on sworn false averments. FIR impugned was consequently registered against the petitioners by the respondent no.3 on the basis of the directions of the Court.

4. It is contended that respondent no.4, in spite of having been handed over items as per her wishes, did not take steps for moving joint petition for divorce under Section 15 HMA till date and on 10th January, 2017 respondent no.4 flatly refused to file joint petition as a result whereof settlement of issues are lingering on, but on 28th of Feb. 2017 respondent no.4-informed the petitioners that a FIR has been registered against them and started calling the petitioners to the police station.

5. The petitioners challenge the impugned F.l.R. No.07/2017 dated 16th February, 2017 on the following grounds:-

"i) That the impugned FIR is illegal in terms of Section 538A and 538-8 of the Cr.P.C as the court cannot take cognizance or pass directions to the respondent no.4 as has been done in the instant case as alleged offences assuming but not admitting if ever to have been committed, were alleged to have been committed over six years back and court below ought to have taken this aspect in mind before passing any directions. In such a scenario and admitted position the impugned FIR is hit by Section 538-8 Cr. P.?.

ii) That respondent no.4 has compromised the same matter on more than one occasion over a period extending five years. As a matter of fact, the respondent no.4 has also falsely implicated petitioners 2 and 3. Idea of registration of the impugned F.I.R no.07/2017, which is replete with wrong factual averments, is a mere after thought to abuse the procedure of Court to coerce the petitioners into paying huge amount to the respondent no.4 towards settlement of Divorce. Moreover, the application u/s 156(3) Cr. ?.?. was barred under law as per the mandate of Section 538-B Cr.P.C. otherwise also

iii) That the petitioners have been falsely implicated in offences under Sections 498-A, 323 and 506 r/w 34 RPC in F.I.R. no. 07/2017 on 16th of Feb. 2017 by the respondent no.3 at the behest of respondent no.4. Relevant to add herein that the falsity of the said F.I.R. is discernible from the fact that respondent no.4 mentions that dowry items are lying with the petitioner whileas she has taken away the dowry items with the intervention of respondent no.3 itself. Moreover, the respondent no.4 had also settled for mutual divorce and thereafter she got her statement recorded before respondentno.4 for withdrawing the complaint but she resided from the same and got impugned FIR registered instead after withdrawing her application filed before respondent no.4 after having compromised the matter as such, said F.I.R. is itself non-est in the eyes of law.

iv) That even the Constitution guarantees Equality of law and equal protection of laws but the illegal and partial acts of the official respondents (respondent no.2 and 3 herein) at the behest of respondent no.4 amounts to violation of petitioners fundamental rights under Article 15 and 21 of the Constitution.

v) That the F.I.R. No.07 2017 dated 16th of Feb. 2017, registered by the respondent no.3 is vitiated by mala fides as the earlier complaints of the respondent no.4 were either withdrawn or dismissed by respondent no.3 owing to the fact that the respondent no.4 did not wish to pursue those complaints against the petitioner. As a matter of fact, this fact was reported by the respondent no.3 to her superiors also but in spite of the past conduct of the respondent no.4, the official respondents did not even wink to implicate the petitioner in a false case.

vi) That the respondents 2 and 3, in connivance with the respondentno.4, have abused the process of Court to unduly harass the petitioner and his family. It is pertinent to mention herein that the petitioner is a government servant and the respondent no.4, boasting of her father's clout, wields a great deal of political and financial upwardness which has helped her in abusing the process of Court in an unparalleled fashion. Pertinent to mention herein that the petitioner cannot wage any struggle with the respondent no.4 as she is politically and otherwise also very powerful lady who has the influence to tilt the administration in her favour as a consequence of which the petitioners have filed the present petition before this Hon'ble Court as a last ray of hope.

vii) That the petitioners have been subjected to hostile treatment by the respondents 2 and 3 as favoritism towards the Respondents 4 has been the foremost factor in registration of FIR by the respondents no.2 and 3.

6. Respondent No.3- SHO Women Cell, Gandhi Nagar, Jammu has filed the objections. The stand taken in the objections is that an application under Section 156(3) Cr.P.C. was filed by the complainant (private respondent No. 4 herein) before the court of learned Judicial Magistrate, 1st Class, Jammu and on the directions of the learned Judicial Magistrate, 1st Class, Jammu, a case FIR No.07/2017 for offence under Section 498-A/506/323/34 was registered in P/S Women Cell, Jammu against (i) Satish Angral S/o Late Sh Shiv Ram (ii) Sunil Angral S/o Late Sh Shiv Ram and (iii) Anita Angral W/o Sunil Angral, all residents of H.No. 119, Govind Nagar, Camp Talab Tillo, Jammu and investigation was entrusted to ASI Mohd. Zabir No.035858. In the objections, it is also averred that during the course of investigation the 1.O. recorded the statements of complainant, as well as, other witnesses under Section 161 Cr.P.C. and as per the statements of complainant and other witnesses, prima facie it appears that the petitioners have committed the offence under Section 498-A/323/506/34RPC. The further stand taken is that since prima facie case is made out against the petitioners, as such, the above said FIR came to be registered and investigation is still pending.

7. I have considered the rival contentions of parties.

8. Counsel for petitioners has reiterated all grounds taken in memo of petition. In support of his contentions, learned counsel for the petitioner relies upon the decisions of the Hon'ble Supreme Court reported in 2016 (9) SCC 1 in case titled Manoj Kumar Sharma vs. State of Chhatisgarh; 2010 (7) SCC 667 in case titled Preeti Gupta vs. State of Jharkhand; 2005 (3) SCC 302 in case titled Mohd. Shamim vs. Smt. Nahid Begum and ors.; and 2010 (1) ALT(Crl)365, incasetitled Jaladanki Ranganayakamma Vs. State of A.P.

9. From bare perusal of FIR, it reveals that respondent No.4 filed a written complaint before CJM, Jammu against the petitioners who are her husband, sister in law and brother in law. The complaint reads as under:-

"(1) that the complainant is legally wedded wife of the accused no.1 and the marriage of the complainant with accused no.1 was solemnized on 08-05-2009 at Govind Nagar, Talab Tillo, Jammu according to Hindu Rites and customs in presence of all the relatives and other family memberswhich was an arranged marriage. Out of the said wedlock no issue has been born. (2) that accused no.1 is the husband of the complainant, accused no.2 is the sister in law (Jethani) of the complainant and accused no.3 is the brother in law (Jeth) of the complainant. (3) that right from the beginning of the marriage the attitude of the accused towards the complainant was very strange and neglect. The behavior of the accused totally changed towardsthe complainant on the behest of the sister in law of the accused no.2. (4) that after marriage the accused persons have endangered health, safety, life, limb of the complainant by causing physical, verbal, emotional and economical abusing the complainant and they insulted the complainant for not preparing good food to the expectation of the accused; they also harassed for less dowry and with the passage of time accused started maltreating, humiliating and also hitting the complainant without any reason whatsoever. Photographshowing the injuries caused to the complainant by all the accused have been enclosed. On 30-08-2010 all the accused brutally beat the complainant and gave grievous injuries due to which complainant's right elbow got fractured. (5) that after two years of marriage the complainanteven lodged a complainant before the Women Cell Jammu on 08-04-2012 wherein the accused put pressure on the police agency as well as on the complainant to get the complaint compromised. A compromise agreement was got written from the complainant's side but not from the accused. After the compromise the accused no.1 as well as the accused on.2 again brutally beaten the complainant but the matter could not be reported to the police agency due to intervention of the parents, that better sense will prevail upon both of them. (6) that thereafter both the parties reside with each other under one roof as husband and wife but as the time passed the demands of the accused changed as they started demanding Rs.80,000/- from the brother of the complainant namely, Susheel Kuumar for purchase of Alto Car as the accused no.1 told that it was a fashion that at the time of marriage a car has to be gifted to the groom by his in laws and you did not gift the same; subsequently the money was paid by the brother of the complainant to the accused no.1 in presence of some persons. (7) that after receiving he said amount the relations-between the complainant and the accused no.1 remained cordial only for a short period of two months as the accused persons again started beating the complainant and on 07-06 -2012 all the accused persons thrashed the complainant-outside the matrimonial home and told that if she wants to continue her matrimonial life with the accused no.1 then she was required to pay Rs.3.00 lacs as dowry , otherwise complainant would not allow to enter in the (house) matrimonial home. Further, the accused persons also threatened the complainant that if the complainant intends to come back to her matrimonial home without fulfilling the demands mentioned above, the accused will do away with the life of the complainant and so at present the complainant is residing with parents without any aid. The accused persons have also retained all her dowry items as well as gold ornaments ; that all the salary of the accused no.1 was being retained by the accused no.2 who is the sister in law (Bhabhi) of the accused no.1;the accused no.3 many times told the complainant that the matrimonial home stands in his name , so complainant should left the matrimonial home. The accused no.3 also told the complainant that if she wants to live in the matrimonial home she is required to pay some amount towards the price of the of the matrimonial home and when the complainant denied the same, the accused no.2 and 3 also in the absence of accused no.1 tortured her physically and emotionally and pressurized her to leave the matrimonial home. (8) that on 06-08-2012 the complainant filed a petition under section 488 Cr.P.C before the-Court of learned 2nd Additional Munsiff, Jammu in which the Hon'bleCourt granted monthly maintenance of Rs.5,000/- to the complainant but till date accused no.1 has not paid even a single penny to her and the complainant has also filed a execution petition in the same court of Learned 2nd Additional Munsiff, Jammu. (9) that on 21-08-2012 the accused has filed a petition under section 13 of theHindu Marriage Act for decree of divorce and the same has been dismissed on 14-06-2014.(10) that on 10-04-2016 the accused no. 1 came to the parental home and asked her to give divorce to him and to take her all dowry items which are lying with the accused no.1 ; and he also threatened her that if she will not give divorce he will eliminate her as well as all her family members (11) that on 1.4.2016 ,she filed a complainant against the accused person with regard to the aforesaid incident but the same was not entertained due to pressure of the accused no.1 and the same has been closed on 16-11-2016."

10. On this complaint, court directed the concerned police to investigate the matter in terms of section 156(3) Cr.P.C. Accordingly, F.I.R. No.07 of 2017 dated 16.02.2017 was registered in Police Station, Women Cell, Jammu for commission of offences under 498-A, 323, 506 r/w 34 RPC.

11. The law with regard to quashing of FIR while exercising power u/s 561-A Cr.P.C., is now well settled. FIR can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression 'ends of justice' and 'to prevent abuse of process of any court' are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited investigation is throttled at the threshold without allowing the police to collect the evidence in order to know about truthfulness of allegations leveled in FIR. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate prosecution/investigation.

12. From bare perusal of allegations leveled in FIR and facts which have emerged during investigation, cognizable offences of serious nature have been made out against the petitioners; there is a specific allegation against the petitioners, who are husband, brother in law and sister in law of respondent No.4, that they have committed the offence of cruelty as defined under section 498-A RPC. The investigation so far has been conducted prima facie shows involvement of petitioners in commission of crime. The disputed question of facts as averred in this petition cannot be appreciated for quashing the FIR. Police has statutory duty to investigate the cognizable offences in terms of section 156 of C.P.C; this duty cannot be scuttled, while exercising jurisdiction under section 561-A Cr.P.C. The defense of accused cannot be considered at this stage. The FIR need not be encyclopaedia of all relevant facts and more incriminating material will be unfolded only during investigation. FIR cannot be placed on the same pedestal as the charge; in case an FIR showing facts which makes out cognizable offence is nipped in the bud even before the entire facts are unravelled, incalculable harm might be caused by depriving the police of their right to collect evidence. It is not the case of petitioners that there is some legal bar in law in investigation of the matter.

13. In 2008 (3) SCC 753 case titled Som Mittal v. Govt. of Karnataka, it has been held as under:-

"(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice.

(13) In State of Bihar v. J.A.C. Saldanha (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

(14) In Hazari Lal Gupta v. Rameshwar Prasad (1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under Section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

(15) In Jehan Singh v. Delhi Administration (1974) 4 SCC 522 the application filed by the accused under Section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) In Kurukshetra University v. State of Haryana (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. (emphasis supplied)

(17) In State of Bihar v. Murad Ali Khan (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not."

14. The foremost argument taken by counsel for petitioner is that FIR has been registered in an offence under section with regard to occurrence which is time barred in terms of chapter XLV-A of Cr.P.C. It has been argued that offences are pertaining to year 2012 but FIR has been lodged in 2017 and limitation for taking cognizance is three years as offence u/s 498-A RPC is punishable with three years. I have considered this aspect of the matter. Section 538-B reads as under:-

"538-B. Bar to taking cognizance after lapse of the period of limitation.- (I) Except as otherwise provided elsewhere in this Code, no Court The Code of Criminal Procedure, 1989 265 shall take cognizance of an offence of the category specified in sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

15. From the perusal of complaint, I find that complainant has specifically mentioned sequence of events with regard to cruelty right from 2010, 2012 and 2016.

16. Further, in Arun Vyas v. Anita Vyas, (1999) 4 SCC 690, it is held as under:-

"The new Code of Criminal Procedure Codecontains Chapter XXXVI, (Sections 467 to 473) which deals with limitation for taking cognizance of certain offences. Section 467 defines that the period of limitation for the purposes of that Chapter, to mean the period specified in Section 468 for taking cognizance of offence. Bar to taking cognizance on the expiry of period of limitation and extension of period of limitation, are dealt in by Sections 468 and473 respectively. The point of commencement of period of limitation in the case of continuing offence is embodied in Section 472 and in the case other than a continuing offence is contained in Section 469. The provisions for exclusion of time in computing the period of limitation are incorporated in Sections 470 and 471. It may be noted here that the object of having Chapter XXXVI in Cr.P.C. is to protect persons from prosecution based on stale grievances and complaints which may turn out to be vexatious. The reason for engrafting rule of limitation is that due to long lapse of time necessary evidence will be lost and persons prosecuted will be placed in a defenseless position. It will cause great mental anguish and hardship to them and may even result in miscarriage of justice. At the same time it is necessary to ensure that due to delays on the part of the investigating and prosecuting agencies and the application of rules of limitation the criminal justice system is not rendered toothless and ineffective and perpetrators of crime are not placed in advantageous position. The Parliament obviously taking note of various aspects, classified offences into two categories, having regard to the gravity of offences, on the basis of the punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for offences for which punishment specified is imprisonment for a term not exceeding three years and even in such cases wide discretion is given to the Court in the matter of taking cognizance of an offence after the expiry of the period of limitation. Section 473 provides that if any Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice, it may take cognizance of an offence after the expiry of the period of limitation. This section opens with a non obstante clause and gives overriding effect to it over all the other provisions of Chapter XXXVI. It is useful to read Section 468 Cr.P.C. here :

"468. Bar to taking cognizance after lapse of the period of limitation - (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year but not exceeding three years.

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

A perusal of the provision, extracted above, shows that Sub-section

(1) of Section 468 enjoins that no Court shall take cognizance of an offence of the categories specified in sub-section (2), after the expiry of the period of limitation mentioned therein. This rule is, however, subject to the other provisions of the Code. Sub-section (2) specifies the period of limitation of six months, if the offence is punishable with fine only; of one year, if the offence is punishable with imprisonment for a term not exceeding one year and of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Sub-section (3) which is inserted by Act 45 of 1978, deals with a situation where offences, are tried together and directs that for the purposes of that section the period of limitation shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional Chief Judicial Magistrate, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences underSections 406 and 498-A from October 13, 1988 and ended on October 12, 1991. But the charge-sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468(2)(c)Cr.P.C. It may be noted here that Section 473 Cr.P.C. which extends the period of limiation is in two parts. The first part contains non obstante clause and gives overriding effect to that section over Sections 468 to 472. The second part has two limbs. The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression `in the interest of justice' in Section 473

cannot be interpreted to mean in the interest of prosecution. What the Court has to see is `interest of justice'. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally Section 473Cr.P.C.in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. This is only illustrative not exhaustive. Any finding recorded by a Magistrate holding that the complaint to be barred by limitation without considering the provisions of Section 473 Cr.P.C will be a deficient and defective finding, vulnerable to challenge by the aggrieved party. In this case the complaint was clearly barred by limitation and no explanation was offered for inordinate delay; this is what the learned Magistrate took note of and concluded that the complaint was barred by limitation. This is correct insofar as the offence under Section 406 is concerned. Therefore, in regard to Section 406 the order of the learned Magistrate discharging the appellants cannot be faulted with. But regarding offence under Section 498-A the learned Magistrate did not advert to the second limb of the second part in Section 473 Cr.P.C. referred to above. The order of the learned Magistrate on this aspect was unsustainable so the High Court has committed no illegality in setting aside that part of the order of the learned Magistrate. In Vanka Radhamanohari (Smt.) vs. Vanka Venkata Reddy & Ors. [(1993) 3 SCC 4], the wife who was subjected to cruelty left the matrimonial home in 1985. In 1990 she filed the complaint alleging cruelty and maltreatment against the husband and mother-in-law and further stating that the husband had remarried. The Magistrate took cognizance of offences under Sections 498- A and 494 IPC. On the petition of the husband under Section 482 Cr.P.C., the High Court quashed the complaint. This Court, on appeal from the judgment of the High Court, held that the High Court erred in quashing the complaint as Section 468 Cr.P.C. could not be applied to offence under Section 494 IPC (for it is punishable with imprisonment for a term which may extend to 7 years) and even in respect of offence under Section 498-A, the attention of the High Court was not drawn to Section 473 Cr.P.C. While setting aside the impugned order of the High Court this Court observed : "As such, courts while considering the question of limitation for an offence under Section 498-A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice".

For the reasons stated above the High Court was not correct insofar as the order of Magistrate relates toSection 406 IPC. But in regard to offence under Section 498-A IPC no exception can be taken to the impugned order under appeal as the learned Magistrate did not take note of Section 473 Cr.P.C., while ordering discharge of the appellants. Now the learned Magistrate shall consider the question

of limitation taking note of Section 473 Cr.P.C. in the light of observations made hereinabove. Accordingly, the appeal is allowed in part.

17. Further section 538-B of Cr.P.C. deals with court for taking cognizance and not to police to investigate the matter. All other pleas taken in the petition and those have been argued may be relevant for discharge of accused when challan is produced, but not for quashing the FIR, because all the pleas are pertaining to appreciation of facts. As per prosecution investigation has already been completed, so police shall produce challan within one month. The law cited by counsel for petitioner is not applicable in present case. Because firstly facts are to be seen and then law made on appreciation of facts, is to be applied. In Manoj Kumar Sharma's case (supra), it has been otherwise held that court should exercise the power under section 482 in exceptional cases and FIR can be quashed if there is express bar grafted in some law with regard to lodging of FIR; in Preeti Gupta's case (supra) the facts are quite different as sister of husband lived in Gujrat and brother lived in Maharashtra, so FIR was quashed; but in present case, it is not the case of petitioner Nos.2 and 3 that they are living separately. In Mohd. Shamim's case (Supra), the facts are quite different as in that case wife accepted Rs.2.25 lakh, and then refused, so Apex court quashed the FIR. In Jaladanki Ranganayakamma's case (supra), FIR was quashed as it was time barred; but in view of Supreme Court law mentioned above, it is not applicable.

18. In view of above discussion, this petition is dismissed. Interim stay, if any, is vacated. However, petitioners are at liberty to take all the pleas of facts or law before court below at the time of framing of charge.